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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/449).

The Counter-Terrorism Committee has received the attached supplementary report from Mexico, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

02-51744 (E) 260802 290802

Annex

[Original: Spanish]

Letter dated 15 July 2002 from the Permanent Representative of Mexico to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit herewith the replies by the Government of Mexico to the letter of 15 April 2002 from the Counter-Terrorism Committee (see appendix).

(*Signed*) Adolfo **Aguilar Zinser**
Permanent Representative

Appendix

Second report of the Government of Mexico to the Counter-Terrorism Committee established pursuant to resolution 1373 (2001), submitted in response to the request from the Chairman of the Committee contained in the note of 15 April 2002

The Government of Mexico has undertaken to comply with the provisions of Security Council resolution 1373 (2001) and to cooperate fully with the efforts of the international community to combat the scourge of terrorism. This report was prepared in response to the letter dated 15 April 2002 from the Chairman of the Counter-Terrorism Committee requesting additional information on the measures which Mexico has thus far adopted or plans to adopt in order to combat and eradicate terrorism.

This additional report supplements the first report submitted by the Government of Mexico on 27 December 2001 (S/2001/1254) and should be read in conjunction with it.

Resolution 1373 (2001)

Paragraph 1

Subparagraph (a):

1. Could Mexico please provide further information about the "transactional patterns" used by the Mexican financial authorities in order to establish whether a transaction is suspicious.

Mexican financial regulations for the prevention of operations involving illegally acquired funds use the term "unusual operation", not "suspicious transaction". The financial institutions determine which operations are to be reported as unusual, in accordance with the criteria established in the operations manuals authorized by the Ministry of Finance and Public Credit (SHCP).

The SHCP Deputy Directorate of Investigation and Operations acts as Mexico's Financial Intelligence Unit (as defined by the Egmont Group) and is responsible for analysing the reports transmitted by financial institutions. Where necessary, it determines whether there is a formal suspicion of money-laundering or other criminal activity which should be reported to the Office of the Attorney-General of the Republic.

Mexican financial institutions and those constituted under Mexican law are required, under the laws and regulations by which they are governed, to comply with procedures for identifying their customers and with the unusual operations reporting system, in accordance with the criteria set out in the operations manuals authorized by SHCP.

These manuals provide that in order to characterize an operation as unusual, institutions must consider, inter alia, the following:

1. The specific circumstances and background of each of their customers, i.e., professional activity, line of business or corporate purpose;

2. The amounts of the operations they commonly carry out, their relationship to the activities referred to above, the type of funds transfer that the customer usually makes and the currency or other medium in which it is made;

3. The commercial and banking customs and practices prevalent in the market in which they operate;

4. The unusually high amounts, complexity and atypical modalities of those transactions that have no apparent economic or lawful cause;

5. The multiple or separate amounts that, added together, equal or exceed the equivalent of US $10,000;

6. Instances where natural or legal persons refuse to provide identification documents, submit false information, seek to evade the established reporting controls, attempt to bribe or intimidate employees of the institutions in order to obtain their cooperation in carrying out operations or contravening the regulations that prevent them, or where there are doubts as to the identity of the real owner of the funds.

Mexican financial institutions and those constituted under Mexican law must, to the extent possible, examine the background and purpose of unusual operations and put the results of their examination in writing.

In characterizing any operation, financial institutions must also refer to the following principles:

Know your customer. The application of this principle makes it possible to know the specific circumstances of each customer (natural and legal persons), such as professional activity, line of business or corporate purpose.

Inconsistency. This element is normally present in any unusual operation, since there is usually an inconsistency between the operation and the customer's activities.

2. What are the features to be included in the definition of unusual operations in order to identify operations potentially intended to be used for terrorist purposes?

The Government of Mexico has not established additional elements, factors or reasons for considering certain operations as unusual because of possible connections with terrorist activities. Nevertheless, the competent authorities have requested financial intermediaries operating in Mexico or under its jurisdiction to reinforce the identification and "know your customer" criteria they currently observe, in order to prevent the use of financial services to support or sustain activities linked to terrorism.

In order to facilitate the analysis of their operations, and in the light of international experience, SHCP transmitted to financial institutions the guidance on terrorist financing prepared by the Financial Action Task Force on Money Laundering.[1]

[1] The guidance on terrorist financing prepared by the Financial Action Task Force on Money Laundering (FATF) is available on the FATF Internet site, http://www.fatf-gafi.org/TerFinance_en.htm.

3. What kind of documentation must be provided by a client in order to fully satisfy the identification requirements of financial institutions?

Financial and banking institutions require identification from their customers (natural or legal persons) in accordance with the following practice:

Requirements	*Type of Person*			
	Natural		*Legal*	
	Mexican	*Foreign*	*Mexican*	*Foreign*
Current official identification document (with signature, photograph and address)	x	x	(Of representative) x	x
Proof of address	x*	x*	x	x
Federal Taxpayers Registration and Tax Identification Nos.	(Where applicable) x	(Where applicable) x	x	(Where applicable) x
Single Population Register Code	(Where applicable) x			
Notarized powers of attorney	(Where applicable) x	(Where applicable) x	x	x
Attestation of incorporation**			x	
Passport/immigration status		x		
Attestation of legal existence				x

* Proof of address is required only if the identification obtained from the customer does not show the address, or if the address does not match the one mentioned in the contract.

** In the case of recently constituted companies, institutions must obtain notarized certification that the first attestation of incorporation is in the process of registration.

Once the customer receives the attestation with the dates of registration in the Public Commercial Register, a copy thereof must be submitted to the institution.

Mexican natural or legal persons

Identification

Mexican legislation provides that natural or legal persons must be asked to establish their identity by means of certain public or private documents, as follows:

- If the applicant is a natural person, that person and his or her principals or representatives, co-principals, authorized third parties and beneficiaries (exercising his or her rights) will be required to present current official identification papers with photograph, signature and address, where applicable.

- If the applicant is a natural person exercising a business activity, or a legal person, that person's representatives or agents and authorized third parties will be required to present official identification papers with photograph, signature and proof of address.

Identity can be established with financial institutions by means of any of the following official documents:

1. Voting card issued by the Federal Electoral Institute;
2. Passport issued by the Ministry of Foreign Affairs;
3. Military identity card issued by the Ministry of Defence;
4. Professional identity card issued by the Ministry of Education;
5. Official identity card issued by a federal, state or municipal department or entity;
6. Driving licence issued by the motor vehicle authorities;
7. Identification papers accepted in border zones, such as those issued by the Government of the United States of America, provided that they are accepted by the credit institutions of that country as valid identification papers.

Current proof of address

Mexican legislation provides that natural or legal persons must be asked to establish their address, as follows:

- Natural persons will be required to show proof of address if their personal identification document does not give their address or the address does not match the one mentioned in the contract.
- Legal persons will be required to show proof of the company address regardless of the identification documents presented.

Address can be established with financial institutions by means of any of the following public or private documents:

1. Most recent property tax receipt;
2. Electricity receipt;
3. Telephone receipt;
4. Water receipt;
5. Lease contract;
6. Bank statement.

Proof of address must not be more than three months old.

Federal Taxpayers Registration No. (issued by the Ministry of Finance and Public Credit)

This requirement applies to legal persons and to natural persons exercising a business activity. The applicant or customer will be asked to supply the Federal

Taxpayers Registration No. and a copy of the Tax Identification No., which must be compared against the original.

Single Population Register Code (CURP) (issued by the Ministry of the Interior)

The Single Population Register Code (CURP) is an official individual identification code whose main characteristic is a single match between the person and his or her code.

This requirement applies only to natural persons, regardless of their economic activity. Where feasible, the customer will be asked to provide a copy of the record issued by the Ministry of the Interior containing the CURP, which must be compared against the original.

Charter and notarized powers of attorney

Natural persons must present notarized powers of attorney if they are represented by their attorneys or agents and legal persons must present a copy of the charter. Depending on the type of company, the applicant or customer will be asked to provide the following documentation:

In the case of commercial companies:

- Charters and amendments thereto, duly registered in the Public Commercial Register;
- Appointments and powers granted to legal representatives of the company;
- Trade unions and associations;
- Statutes duly registered in the Public Commercial Register and/or minutes of shareholders' meetings stipulating the appointment of agents.

In the case of recently constituted commercial companies, institutions will request notarized certification that the attestation of incorporation is in the process of registration in the Public Commercial Register; the customer is required to submit to the institution a copy of the registration in the Register once the customer receives the attestation containing the registration dates. No accounts may be opened and no contracts may be signed if the customer does not submit the aforesaid notarized certification.

Trade unions will be asked to submit their record of registration with the Ministry of Labour and Social Security or with the respective conciliation and arbitration panel, depending on the jurisdiction involved.[2]

[2] Article 365 of the Federal Labour Act provides that: "Trade unions must register with the Ministry of Labour and Social Security in cases under federal jurisdiction and with the conciliation and arbitration panels in cases under local jurisdiction. To this end, they shall submit in duplicate: (i) an authorized copy; (ii) a list showing the number, names and addresses of their members and the name and address of the employers, enterprises or establishments where services are provided; (iii) an authorized copy of the statutes; and (iv) an authorized copy of the minutes of the meeting at which the leadership was elected. The documents referred to above shall be authorized by the general secretary, the organizational secretary and the recording secretary, except as otherwise provided in the statutes."

Natural or legal persons of foreign nationality

In addition to complying with the requirements set forth above, the following must be considered, as the case may be:

- Natural persons will be asked for their passport, and the name, photograph, nationality and signature will be verified to ensure that they match the particulars supplied by the applicant; where applicable, proof of immigration status will also be requested;
- Legal persons will be asked to provide the original document establishing their legal existence and that of the person accredited as their legal representative; if the latter is also of foreign nationality, his or her original passport will be requested;
- Documents issued abroad must be similar to those provided for in civil and commercial law. Examples of valid identification documents are passports and duly issued immigration papers.

The institution must verify that these documents are valid on the date of their submission.

4. Does Mexico have any plans to require natural or legal persons other than banks (e.g. attorneys, notaries and other intermediaries) to report suspicious transactions that might be linked to terrorist activities?

SHCP is analysing the possibility of issuing administrative rules applicable to the non-financial sector for the prevention of money-laundering and the financing of terrorist activities. The non-financial sector includes attorneys, notaries and other non-financial intermediaries.

Subparagraph (b):

5. Since Mexico is completing the constitutional procedures to become a party to the International Convention for the Suppression of the Financing of Terrorism and is consequently preparing amendments to its Federal Penal Code, please furnish a progress report on those amendments.

The federal executive branch is scheduled to submit the proposed initiative on amendments and additions to the Federal Penal Code, the Federal Code of Criminal Procedure and the Federal Organized Crime Act for approval by Congress at the forthcoming session beginning in September 2002.

The purpose of the proposed reform is to increase the minimum penalty for the crime of terrorism and to criminalize the financing of terrorist activities initiated or prepared in national territory for completion abroad. Another purpose of the amendment initiative is to abolish early release for persons convicted of terrorism.

Subparagraph (c):

6. What is the legal time frame within which a court is required to decide to authorize or deny the Public Prosecutor's Office the authorization to freeze funds? How long does it take in practice to freeze such funds?

During the initial investigation, the Public Prosecutor's Office is authorized to seize any instrument, object or product of the crime. When the offence is connected

with organized crime (including terrorist organizations, article 29 of the Federal Organized Crime Act), judicial authorization is required.

During the trial, the court has three days in which to decide whether to authorize or deny the Public Prosecutor's Office the authorization to seize (freeze) funds. The funds are frozen immediately after the measure is ordered by the Public Prosecutor's Office or once the relevant judicial authorization has been obtained.

7. Under article 29 of the Federal Organized Crime Act, if a person certifies that assets were lawfully acquired, they must be released. Does that mean that the person in question must prove that the assets were lawfully acquired or that the person need only demonstrate that the acquisition was more probably than not lawful?

Under article 29 of the Federal Organized Crime Act, the person in question must certify that the assets are from a legitimate source, and not only demonstrate that it was merely likely that they were lawfully acquired. It is for the federal judicial authority to determine whether the certification is genuine.

8. Does article 29 mean that lawfully acquired assets belonging to terrorists cannot be frozen?

Article 29 of the Federal Organized Crime Act establishes that, when a person certifies that seized assets are from a legitimate source, the authority must order the seizure to be lifted. Certification of the legitimate source of assets must at all times be supported, justified and duly proved.

It should be pointed out that, based on the reply initially submitted by Mexico in document S/2001/1254, lawful assets that are instruments or objects of an international crime are to be forfeited. Moreover, lawfully acquired assets belonging to terrorists may be forfeited if there is evidence to suggest that such assets are destined for or connected with terrorist activities, pursuant to articles 40 of the Federal Penal Code and 181 of the Federal Code of Criminal Procedure.

Lawfully acquired assets belonging to terrorists that are not used for the purpose of committing a crime may not be seized.

Subparagraph (d)

9. How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes to terrorist activities?

Mexico's financial tracking system applies exclusively to intermediaries stipulated in the domestic financial legislation. Should they engage in activities different from their primary purpose or in unlawful activities, without prejudice to the penalties provided for in the actual financial legislation, they will be subject to another type of penalty that may even consist of withdrawal of authorization and registration to operate as a financial intermediary.

In the exercise of their audit functions, the fiscal authorities may penalize those associations that engage in activities other than those declared, which must not, of course, involve an unlawful purpose such as support for terrorist activities. Penalties may range from monetary fines to reporting to the competent criminal authorities.

Paragraph 2

Subparagraph (a):

10. Is Mexico considering amending the Federal Penal Code in order to criminalize recruitment for the purpose of carrying out terrorist acts regardless of whether such acts have actually been committed or attempted?

The Government of Mexico is not considering amending the Federal Penal Code in order to criminalize, as a separate crime, recruitment of persons for the purpose of committing terrorist acts. However, the initiative, referred to in the reply to question 5, of amending the Federal Penal Code provides, as part of the criminalization of financing of terrorism, for punishment of a person who aids or abets others in committing crimes of terrorism or in supporting national or international terrorist activities or terrorist organizations.

In addition, in the initial report (S/2001/1254) Mexico stated that the person recruiting may be penalized as an accomplice to the crime of terrorism under the provision contained in article 13, paragraphs V and VI, of the Federal Penal Code, which defines as an accomplice a person who wilfully instructs another person to commit the crime, or a person who aids or abets another in committing the crime. If the crime is committed by three or more persons, the person who does the recruiting may, depending on the circumstances of the case, also be punished as an accomplice to the crime of unlawful association (article 164 of the Federal Penal Code) or as a participant in organized crime (article 2 of the Federal Organized Crime Act).

11. According to the report, "Any person who recruits members of terrorist groups may, depending on the circumstances of the case, be considered an accomplice to the crime by unlawful association, punishable under the Federal Penal Code, or as a participant in crimes committed by organized crime, punishable under the Federal Organized Crime Act." Please elaborate on the circumstances which might lead the court not to punish the recruitment of members of terrorist groups.

Under Mexican legislation there are no circumstances that could lead a court not to punish the recruitment of members of terrorist groups.

The Committee's question would appear to be based on a misinterpretation of Mexico's initial reply to this paragraph of resolution 1373 (2001). As stated in the sixth paragraph on page 7 of document S/2001/1254 and the second paragraph of the reply to question 10 in this document, a person who recruits members of terrorist groups may be considered an accomplice to the crime of terrorism and, in addition, as an accomplice to the crime of unlawful association or organized crime. If no organization of the crime is involved, this would be considered as a crime of unlawful association.

On the basis of the foregoing, unless it is proved that a crime of terrorism was attempted or carried out and that the person in question participated in it, the recruitment of members of terrorist groups is not a punishable offence. Under Mexican law: "A punishable attempted crime occurs when the decision to carry it out is followed by the commission of some or all of the acts that would lead to its completion, or by the omission of acts that should prevent it, if the crime is not completed for reasons beyond the control of the person concerned" (article 12 of the Federal Penal Code).

12. Please outline the controls regarding the sale of firearms and explosives within Mexican territory.

In Mexico, the controls on the formal sale of firearms and explosives are legally maintained in articles 10 of the Political Constitution of the United Mexican States; in articles 4, 7, 17, 37, 38, 40, 41, 43, 48, 49, 50, 51, 52, 53, 55, 56, 68, 69, 70 and 73 of the Federal Firearms and Explosives Act and, from the administrative point of view, in the provisions of article 48, paragraph V, of the corresponding regulations.

The controls applied to the sale of firearms and explosives are as follows:

(1) Under article 4 of the Federal Firearms and Explosives Act, control of all weapons in the country, for which there is a federal weapons register, is the responsibility of the executive branch, through the Ministry of Defence, in accordance with the respective powers entrusted to them by that Act and its regulations;

(2) The control referred to in article 4 is the exclusive responsibility of the Ministry of Defence;

(3) For that purpose, a physical or moral, public or private person submits an application for the sale of firearms or explosives, which must be granted provided that the legal requirements have been met;

(4) Once general permission has been granted, the person concerned submits a monthly report on his commercial activities, and is obliged to make the necessary arrangements for inspections by the Ministry of Defence;

(5) A person who has received general permission for these activities and who sells a firearm or explosives requires the customer to produce identification and the special permit to purchase the material issued by this Ministry, and the seller records the transaction in the appropriate register;

(6) Any acquisition of firearms or explosives on the informal market must be reported to the official of the Public Prosecutor's Office, as a violation of the Federal Firearms and Explosives Act. Such acts are punishable by imprisonment and the applicable fine, as well as forfeiture of the firearms and explosives;

(7) No permits are currently granted to physical persons for the sale of firearms;

(8) This activity is carried out exclusively by the Arms and Ammunition Marketing Board of the Department of Manufacturing, which reports to the Ministry of Defence, in strict application of the pertinent law.

Subparagraph (b):

13. Please provide copies of model agreements in the field of the exchange of financial information and mutual assistance between the customs services.

As requested, copies of the following instruments have been provided in annex A to this report:

(1) Agreement on mutual cooperation between the Government of the Kingdom of Spain and the Government of the United Mexican States for the exchange of information relating to financial transactions conducted through

financial institutions in order to prevent and combat operations from an unlawful source or money-laundering;

(2) Agreement on mutual cooperation between the Government of the United Mexican States and the Government of the French Republic for the exchange of information relating to financial transactions conducted through financial institutions in order to prevent and combat operations from an unlawful source or money-laundering;

(3) Agreement on mutual cooperation between the Government of the United Mexican States and the Government of the United States of America for the exchange of information relating to currency transactions conducted through financial institutions in order to combat unlawful activities;

(4) Agreement between the Government of the United Mexican States and the Government of the United States of America on mutual assistance between their customs administrations.

Subparagraph (c):

14. The report states that, under article 126 of the Population Act, any foreigner who attempts to undermine Mexico's sovereignty or national security shall be permanently expelled from the national territory. Is there a legal provision in Mexico which authorizes the expulsion of a person who attempts to undermine the national security of another State?

There is no legal provision in Mexico that explicitly authorizes the expulsion of a person who undermines the national security of another State. However, the immigration authorities are authorized to refuse the admission, sojourn, return or change of immigrant status of foreigners with an unsavoury past history abroad, under article 37, section V, of the Population Act, and article 106, section II, of the corresponding regulations. The foregoing is, without prejudice to the applicable provisions of the extradition treaties concluded between Mexico and other countries.

Subparagraph (e):

15. The report states that there are rules in the Federal Organized Crime Act regarding "measures to protect witnesses, judges, experts, victims and other persons involved in criminal proceedings for offences related to organized crime" (article 34). Please describe these measures. How well have these measures worked so far?

The Office of the Attorney-General of the Republic enjoys full discretionary powers to determine the assistance and protection measures to be applied in each case, according to the status or risk circumstances of the person in question. To date, the Special Organized Crime Unit has provided surveillance and police custody, lodging, food and financial assistance. In exceptional circumstances, the measures have been extended to relatives of the person to be protected or assisted.

16. On the basis of article 4 of the Federal Penal Code, Mexican courts seem to have no jurisdiction over acts committed abroad by foreign nationals in cases where no Mexican citizens are included among the victims. Please clarify whether this is the case, in particular, in all of the following circumstances.

Mexican courts have no jurisdiction over acts committed abroad by foreign citizens, whether or not they normally reside in Mexico, unless Mexican citizens are among the victims.

Acts committed outside Mexico by a person who is a citizen of, or habitually resident in, Mexico (whether that person is currently present in Mexico or not).

The Mexican Government shall have jurisdiction if a Mexican commits a crime against Mexicans or foreigners in foreign territory. In that event, Mexico has jurisdiction whatever the nationality of the victims.

Mexican courts have jurisdiction for acts committed by a national or habitual resident of Mexico in foreign territory only under the following conditions, in accordance with article 4 of the Penal Code:

- The accused is in national territory (para. 1);
- A final verdict has not been rendered in the country where the crime was committed (para. 2);
- The offence with which the accused is charged is considered a crime both in the country where it was committed and in Mexico (para. 3).

Mexico also has jurisdiction over crimes committed abroad when they are initiated, planned or committed abroad provided that they produce or are intended to produce effects in national territory, in accordance with article 3 of the Federal Penal Code.

Acts committed outside Mexico by a foreign national who is currently in Mexico.

In accordance with the response to the previous question, Mexican courts have jurisdiction over acts committed outside Mexico by a foreigner, provided that the victim is Mexican and all the conditions of the aforementioned article 4 of the Penal Code have been met, including that the alleged perpetrator is in national territory.

However, article 4 of the Federal Penal Code is not the only relevant provision. International treaties to which Mexico is a party, which constitute positive law in accordance with article 133 of the Constitution, are also applicable in the Mexican Republic. In addition, article 6 of the Federal Penal Code recognizes the applicability of international treaties which cover crimes. In accordance with those treaties, Mexico can exercise jurisdiction under the conditions established therein.

Subparagraph (f):

17. The report also states that legal assistance is provided, in accordance with international reciprocity, to countries with which Mexico has no mutual legal assistance treaty. Please inform the CTC how the Mexican authorities establish whether the requirement of reciprocity is met with respect to countries in relation to which there are no precedents, or in relation to which precedents are few in number or contradictory. Would this practice be affected in any way by the obligation set forth in subparagraph 2 (f) of the resolution?

The Mexican Government usually offers legal assistance by asking the requesting State to make the request through the diplomatic channel and when the

foreign Government indicates that it is offering reciprocity in similar cases submitted by the Mexican authorities.

In a case where there are no elements on which to base reciprocity, or where there are few or contradictory precedents, Mexico follows the principle of good faith and offers the requested cooperation and assistance. In Mexican practice there have been no precedents for denying international reciprocity in the cases mentioned.

The gravity of terrorism, the lack of a treaty, the absence of precedents or even cases where, under reciprocity, it would be advisable to deny a request, would not pose obstacles to Mexico in offering cooperation in accordance with its laws and internal procedures. The application of paragraph 2 (f) of Security Council resolution 1373 (2001) would not be affected.

18. What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met and how long does it actually take in practice to implement such a request?

In Mexico there is no set or strict time limit, either in law or in practice, for responding to requests for legal assistance in criminal investigations and proceedings. The time needed for processing depends on the type of request, the supporting documentation and the degree of involvement of the courts in its processing. Mexico attempts to respond to requests for assistance as quickly as possible.

In practice, the processing of this type of request takes between three and six months, depending on the type of request and the supporting documentation. In the case of financial information, the Attorney General's Office requests information or documentation relating to the financial system through the National Banking and Securities Commission, the National Insurance and Guarantees Commission, and the National Commission for the Retirement Savings System, in their respective areas of expertise (article 180 of the Federal Penal Code).

Paragraph 3

Subparagraph (b):

19. Are the cooperation agreements and the 19 bilateral mutual legal assistance treaties mentioned in the report under subparagraph 2 (f) identical? If not, please provide a list of the countries with which Mexico has entered into such agreements.

The cooperation agreements referred to above are the bilateral mutual legal assistance treaties mentioned in subparagraph 2 (f) of the report.

Subparagraph (c):

20. According to the report, Mexico has concluded 19 bilateral treaties in the area of international legal assistance and 28 extradition treaties. Could Mexico please provide the CTC with a list of those 19 and 28 countries, respectively?

The following is the list of countries with which Mexico has concluded mutual legal assistance treaties:

1. Australia
2. Canada
3. Colombia
4. Costa Rica
5. Cuba
6. Chile
7. El Salvador
8. France
9. Germany
10. Greece
11. Guatemala
12. Nicaragua
13. Panama
14. Peru
15. Portugal
16. Spain
17. United States of America
18. Uruguay
19. Venezuela

The following is the list of countries with which Mexico has concluded extradition treaties:

1. Australia
2. Bahamas
3. Belgium
4. Brazil
5. Canada
6. Colombia
7. Costa Rica
8. Cuba
9. Chile
10. El Salvador
11. France
12. Greece
13. Guatemala
14. Italy
15. Nicaragua
16. Netherlands
17. Panama
18. Peru
19. Portugal
20. Republic of Korea
21. Spain
22. United Kingdom
23. United States of America
24. Uruguay
25. Venezuela

In addition, Mexico is a party to the Multilateral Convention on Extradition, signed in Montevideo by:

1. Argentina
2. Chile
3. Colombia
4. Dominican Republic
5. Ecuador
6. El Salvador
7. Guatemala
8. Honduras
9. Nicaragua
10. Panama
11. United States of America

Please provide a copy of the text of a typical agreement from each category.

See annex B of this report, which includes the following:

1. Extradition treaty concluded between the United Mexican States and the Republic of Peru;

2. Treaty on judicial assistance in criminal matters concluded between the United Mexican States and the Republic of Peru.

It would be of particular interest to receive the outline of an agreement on mutual legal assistance which provides for requests for assistance to be acted on in accordance with special procedures set out in the request.

None of the international agreements that Mexico has signed contain particularly detailed procedures. However, a copy of the agreement on judicial assistance between Mexico and Colombia, which contains specific provisions on forfeiture and products or instruments of the offence, is enclosed.

Subparagraph (d):

21. Could Mexico please provide a progress report on the ratification of the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism?

In accordance with constitutional procedures, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism were submitted for consideration to the Senate of the Republic at the regular session which began in March 2002. To date, both instruments have been favourably received by the relevant committees and are awaiting consideration by the plenary of the Senate. A decision is expected during the autumn session, which begins in September of this year.

Subparagraph (e):

22. Have the crimes specified in the relevant international conventions been included as extraditable offences in the bilateral treaties which Mexico has concluded with other countries?

It has not been necessary to include expressly in bilateral treaties the offences defined in the international treaties on terrorism. In most of those treaties, the requirement for admissibility of the extradition request is that the offence must carry a minimum prison term of one to two years. In Mexico, terrorism carries a minimum penalty of two years, and if the reform initiative to which reference was made in the answer to question 5 is adopted, the minimum penalty would increase to 20 years.

In addition, the international treaties on terrorism to which Mexico is a party establish the obligation of the parties to try or extradite an alleged perpetrator found in their territory; thus, in the cases envisaged by those treaties, there would be no legal obstacle to extradition or judicial assistance.

The multilateral anti-terrorism instruments to which Mexico is a party provide that the offences contemplated therein shall be considered as included among the offences giving rise to extradition in any extradition treaty concluded between the States parties.

Other matters:

23. Could Mexico please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

See Annex C of this report, which includes the following:

1. Organizational structure (first and second levels) of the Ministry of Finance and Public Credit, noting in detail the assignment of the banking, savings and insurance and guarantees commissions to act as regulatory bodies in the area of money-laundering, among other functions, and that of the Deputy Directorate of Investigation and Operations, constituted as the Mexican Financial Intelligence Unit, in accordance with the Egmont Group's definition
2. Organizational structure (first and second levels) of the Tax Administration Service, to which the General Customs Administration is attached (C.2.a)
3. Organizational structure of the National Banking and Securities Commission
4. Organizational structure of the National Insurance and Guarantees Commission
5. Organizational structure of the Retirement Savings System
6. Organizational structure of the National Migration Institute (INM)
7. Organizational structure of the Office of the Attorney-General of the Republic
8. Organizational structure of the Ministry of Public Security (SSP)
9. Organizational structure of the Centre for Investigations and National Security (CISEN)

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/461).

The Counter-Terrorism Committee has received the attached supplementary report from Paraguay, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 11 July 2002 from the Permanent Representative of Paraguay to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

As requested in your letter dated 18 April 2002, I have the honour to transmit the supplementary report of the Government of Paraguay pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Eladio **Loizaga**
Ambassador
Permanent Representative

Supplementary report of Paraguay on resolution 1373 (2001)

Subparagraph 1 (a)

The Counter-Terrorism Committee (CTC) notes, from paragraph 165 of the report, that, as of December 2001, a preliminary draft of an anti-terrorist Act was under consideration in various commissions in the Chamber of Deputies. On the basis of the summary of that proposed law contained in that paragraph, it is apparent that consideration is being given to matters of the kinds raised in the comments that follow. The CTC would be grateful, therefore, for a report on the progress made with the development and enactment of the proposed Act. The CTC also invites Paraguay to take the comments in this letter into account in the refinement of the draft. It would be appreciated if a detailed outline of the new law, either as enacted or as then proposed, could accompany Paraguay's further report.

At the time this supplementary report was being drafted, Parliament had indefinitely postponed (*sine die*) consideration of the draft anti-terrorism act; it will, however, be considered at the appropriate time. Various sectors of civil society opposed the bill and requested that it be subjected to detailed examination and analysis before being adopted, since it was feared that, once adopted, it might be applied in a manner that infringed civil liberties and safeguards. This concern was prompted largely by memories of laws that were in effect during the period of the dictatorship and that restricted the exercise of individual liberties. Moreover, it is the intention, when drafting the said bill, to take into account other relevant international instruments such as the Inter-American Convention against Terrorism, which Paraguay signed on 3 June 2002 at the thirty-second session of the General Assembly of the Organization of American States (OAS).

What is the purpose of the definition in the money-laundering law of the concept of a terrorist group? Please outline in more detail the scheme of the legislation.

The purpose of a law is to characterize individuals or groups of individuals and to outline their specific features so as to clarify how they will be dealt with under the law; that was the purpose of the definition of "terrorist group" in the said law.

As to the scheme of the legislation concerning money-laundering, it is limited to Act No. 1015/96 on preventing and punishing acts designed to launder money or property.

The Central Bank of Paraguay established the regulations issued under Act No. 1015 by resolution 2, record 84, dated 2 March 1997. This resolution establishes procedures for preventing and impeding the use of the financial system and other sectors of economic activity in the carrying out of acts intended to legitimize money or property derived from criminal activities by:

- Identifying the persons to whom certain obligations apply and who are under the oversight of the Superintendence of Banks (SIB);
- Determining the scope/operations for the application of the resolution in question;
- Providing also for clients to be clearly identified, by establishing a standard form for that purpose;

- Establishing that documents must be kept for a period of five years;
- Determining that entities have an obligation to report suspicious operations to the Secretariat for the Prevention of Money- or Property-Laundering (SEPRELAD) on specific forms established by resolution 245/97. It also requires external auditors to include in their annual statements, when so requested by SIB, a special report on compliance with Act. No. 1015/97;
- Regulating the procedures for internal oversight and designating one official to monitor compliance with the procedures;
- Prohibiting the existence of anonymous accounts or accounts held under fictitious names;
- Calling for compliance with Act. No. 1015/96 and considering failure to comply with it as a violation of the provisions established by the Central Bank of Paraguay (BCP);

Other rules supplement existing legislation on the matter; they include the following:

- Resolution 3, record 59, dated 25 March 1997, of the BCP Board of Directors on the regulation of foreign exchange operations of BCP;
- Resolution SIB 153/98, of 13 May 1998, establishing that entities which effect remittances of currency abroad must first inform SIB and the Department of Economic Crimes, for statistical purposes, of the type of currency, its amount and its geographic destination. Likewise, companies that transport cash must keep a record of all the transport operations effected;
- Resolution 9, record 105, dated 5 October 2001, of the BCP Board of Directors creating a unit to analyse the prevention of money- or property-laundering. The principal function of the unit is to centralize, at the institutional level, everything connected with the processing of, and requests for, reports on money-laundering;
- Resolution 1, record 123, of 15 November 2001, concerning a Code of Conduct for the Prevention and Identification of Money-Laundering and Other Financial Crimes and Offences and defining, among other things, the mechanism of control, responsibilities and unusual operations (and the requirement to report to the Unit any operation found to be unusual), which came into force on 3 February 2002. Even though it is now in operation and even though implementation of the Code is being effectively and efficiently monitored, it is necessary to have a team that is trained in, inter alia, foreign exchange operations and transfers, and a computer structure within SIB that can support and process the information provided by the entities of the financial system. It will be essential, also, to have the necessary budgetary and technical resources.

Subparagraph 1 (b)

Articles 8, 9 and 10 of the proposed law mentioned above are particularly relevant to compliance with this paragraph. The CTC would accordingly be especially interested in the progress made with enacting and giving effect to those articles.

Since Congress has postponed consideration of the said bill *sine die*, no progress has been made in the implementation of the said articles.

Subparagraph 1 (c)

The CTC notes from paragraph 4 of the report that action has been taken, employing mechanisms available under the money-laundering legislation, to freeze assets of named individuals and entities. However, the funds and other resources used to support terrorism do not always come from illicit sources. How does Paraguay propose to fulfil the requirements of this subparagraph in relation to lawful funds and resources which are used for terrorist purposes?

Provision is made, in the current legislation pertaining to money-laundering, for reporting to the Secretariat for the Prevention of Money- or Property-Laundering (SEPRELAD) any action or operation — irrespective of the amount involved — if there is any indication or suspicion that it might involve the offence of money-laundering. Investigations and analyses are initiated on the basis of reports from the national financial system regarding suspicious activities involving licit and illicit funds and resources.

SIB is responsible for monitoring compliance with Act No. 1015 within the financial system. It does do by:

Verifying *in situ* that all entities in the system are correctly applying the client identification form. Not only is this part of the SIB inspection programme, but BCP resolution 245/97 also requires external auditors to include in their annual statements, when so requested by SIB, a special report on the auditing of compliance with the said Act No. 1015;

Looking into the reports of suspicious operations made by financial entities, checking them out and dealing with them, as appropriate. There is also a requirement, under resolution 1, record 123, of 15 November 2001, to report to the unit to analyse the prevention of money- or property-laundering;

Lastly, one of the main purposes of creating the said unit is to monitor the financial system's operations (not just those having a value greater than US$ 10,000) in order to verify suspicious operations and accelerate the freezing of and possible punishment for such operations.

Subparagraph 1 (d)

Do the obligations to report suspicious transactions that are applicable to the financial sector also extend to intermediaries outside the main financial sector, such as lawyers?

Article 13 of Act No. 1015/97 states to whom the obligation to report suspicious transactions applies and also contemplates persons other than those

included in the financial system. However, the scope of SIB action is limited to the financial system.

What preventive controls and surveillance measures exist to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organizations?

The preventive controls and surveillance measures are carried out by means of reports of suspicious operations within the national financial system.

In any operation having a value greater than US$ 10,000, it is compulsory to fully identify the client and the principal, regardless of the type of entity involved.

Is the US$ 10,000 test the only one for identifying reportable transactions?

The US$ 10,000 test is not the only one for identifying reportable transactions; Act No. 1015/97 stipulates that the following must also be looked into:

- Operations that may have been broken up in order to avoid having to comply with the identification, recording or reporting obligations;
- Complex, unusual or large operations or operations that do not conform to the customary pattern of transactions or that by their nature and size do not correspond to clients' active or passive operations, based on their prior record of operations;
- Any cash income for which there is no apparent justification effected by a large number of persons.

Please indicate the measures and instruments available to regulate alternative funds transfer arrangements such as the system known as Hawala.

SIB exercises control only over entities that are part of the financial system; it does not have measures and instruments to regulate alternative funds transfer arrangements.

Subparagraph 2 (a)

Please outline the measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Paraguay, including, in particular:

- **The carrying out, within or from Paraguay, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and**
- **Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.**

How does Paraguay control the establishment and operation in its territory of paramilitary groups that have the potential to engage in terrorist activities?

The armed forces work jointly with other governmental institutions through exchanges of information. They work especially with the National Police, the National Anti-Drug Secretariat (SENAD) and the government departments to prevent the establishment and operation of paramilitary groups. No such groups are known to exist thus far.

What measures does Paraguay have in place to prevent terrorists obtaining weapons within or outside its territory, in particular small arms or light weapons? Please outline the legislation concerning the acquisition and possession, and import and export, of such weapons.

Paraguay has signed bilateral agreements on the subject, including Act No. 1057, which approves the Agreement on facilitating the control of illicit trafficking in weapons between the Republic of Paraguay and the Federative Republic of Brazil.

Executive Decree 119/2001, of 19 January 2001, establishes control mechanisms in respect of Brazilian nationals, foreign residents in Brazil or Brazilian legal persons who obtain weapons and ammunition in the Republic of Paraguay.

In June 2002, the National Congress approved the Weapons Act, which incorporates the international instruments of both the United Nations system and the inter-American system.

The Secretariat for the Prevention and Investigation of Terrorism and the Department of Economic and Financial Crimes of the National Police carry out prevention and intelligence work in strategic areas of the country, with a view to detecting terrorist and other related activities.

Detentions and arrests are also effected. The following are examples:

Secretariat for the Prevention and Investigation of Terrorism:

Arrests	*Deportations*	*Tried*
1 person in 1998	1 person in 1998	3 persons
2 persons in 2000	1 person in 2001	
23 persons in 2001	2 persons in 2002	
2 persons in 2002		

Law enforcement has intelligence agents dispersed throughout the national territory. One of its functions is to detect the possible formation of paramilitary groups capable of conspiring against the constitutional order and to alert the State accordingly.

There are currently two bodies that exercise control over the possession, bearing and importation of firearms: the Department of Military Supplies (DIMABEL) belonging to the armed forces and the Department of Weapons and Ammunition of the National Police.

Subparagraph 2 (b)

Does Paraguay have a body that specializes in counter-terrorism, or is that the responsibility of a number of departments or agencies? In the latter case, how is coordination between the various entities effected? In this connection, the CTC notes the establishment of the Secretariat for the Prevention and Investigation of Terrorism but notes also that it is stated to be subordinate to the National Police.

The Government of the Republic of Paraguay has a body that specializes exclusively in the prevention and investigation of terrorism. It is the Secretariat for the Prevention and Investigation of Terrorism, which is subordinate to the Police Command, and its function is to plan, coordinate and execute tasks related to the prevention and suppression of terrorist acts.

Does each agency define its strategy independently, or does it carry out measures that have been established at a higher level? Who determines that policy and, if applicable, the distribution of tasks among agencies?

The Secretariat for the Prevention and Investigation of Terrorism and the Ministry of the Interior coordinate their activities with the National Defence Council and the Council for the Internal Security of the Nation, pursuant to Act No. 1,337/99 on National Defence and Internal Security.

What is the scope of the activities of the Specialized Working Group on Terrorism mentioned in paragraph 76 of the report? What are the results of its activities?

The Permanent Working Group (GTP) is made up of the Ministers and Deputy Ministers of the Interior of the Southern Common Market (MERCOSUR), Bolivia and Chile. The Specialized Working Group (GTE) is made up of the heads of the anti-terrorism units and advisers of the aforementioned countries. They are all members of the Meeting of Ministers of the Interior of MERCOSUR, Bolivia and Chile, which is subordinate to the Council of the Southern Common Market.

Both expert groups work predominantly on the prevention of terrorism, by exchanging information and conducting joint preventive operations against terrorism.

It is worth mentioning the important advance made in regional communication, in the form of an encrypted communication system that was introduced recently. In addition, anti-terrorism training courses are being held this year.

Subparagraph 2 (c)

It would be helpful to the CTC if Paraguay would clarify whether there are any provisions in existing laws which exclude from access to Paraguay persons of the kind mentioned in subparagraph 2 (c) of the resolution who are not asylum-seekers.

Under the provisions of Migration Act No. 978/96, an alien perceived as persona non grata in Paraguay may be refused admission or expelled. This is an administrative decision taken by the Migration Office.

Subparagraph 2 (e)

What is the competence of the courts of Paraguay to deal with criminal acts of each of the following kinds:

- **An act committed outside Paraguay by a person who is a citizen of, or habitually resident in, Paraguay (whether that person is currently present in Paraguay or not);**
- **An act committed outside Paraguay by a foreign national who is currently in Paraguay?**

In chapter II, "Law enforcement", of the Penal Code of the Republic of Paraguay, article 4 refers to the application of the Code to all punishable acts provided for in special laws, in relation to and consistent with article 321 of the Code, which refers to the general adaptation of penalties to the special penal laws.

Article 6 of the Penal Code, by referring to acts in national territory, reflects the principle of territoriality and therefore equates with national territory ships and boats flying the flag of each State, thereby adopting the so-called flag principle. The following principles have been added to this principle: the person, protection of interests, substitution and universality.

According to the principle of the person, the penal laws of a State apply to its nationals even though the offences have been committed outside its national territory. In the formulation of concern here, the principle is described as "active" in contrast to its "passive" counterpart, which denotes the extension of the penal law of a State to offences committed outside its territory when the victims are nationals of that State. The latter form of the principle of the person is not reflected in the Penal Code.

According to the principle of protection of interests, the courts of a State have jurisdiction to apply its penal law is recognized when offences that affect its interests as a State are committed outside its territory by its nationals or by aliens. This principle is expressly embodied in article 7 of the Penal Code, which enumerates a series of punishable acts whose common denominator is prejudice to the State interests of Paraguay (the existence of the State itself, the constitutional order, the constitutional organs, the administration of State justice, acts committed by a holder of public office in Paraguay in connection with his or her functions, punishable acts involving the security of persons when there is collective risk).

The principle of universal justice established in article 8 of the Penal Code refers to acts committed abroad against legal property enjoying universal protection. Under this principle, the State reserves for itself the right to adjudicate acts committed outside its territory by nationals or aliens when such acts are directed against legal property of concern to the entire international community. Accordingly, a judge of the State in which the offence is committed acts as representative of the international community, in accordance with the principle of "dual function", to prosecute acts of concern to that community.

The principle of universality ensures that prosecution occurs more promptly than in the case of extradition. The State can proceed, unhampered, in penal matters and applies the relevant penal law abroad in cases where the object of the suppression is of predominantly human interest, not merely national.

The requirements for the aforementioned prosecution are: universal nature of the legal property, and the presence of the perpetrator in the national territory (art. 8, para. 2).

Article 9 establishes a principle of real importance, the principle of substitution. This principle continues to remedy lacunae in the law with respect to punishability that occur as a result of the deficiencies of the other principles mentioned above. In accordance with this principle, the Paraguayan State reserves the right of its courts to hear cases in which: (a) the acts were committed abroad, (b) the acts are punishable in the place of commission, (c) the perpetrator is an alien or without nationality and is present in Paraguay, (d) *ne bis in idem* does not apply, and (e) the foreign State refuses to extradite even though extradition is admissible for the category of punishable offence involved.

It also establishes that the principle of substitution shall operate when there is no provision for punishment in the place where the act is committed.

With the application of article 11 of the Penal Code, the principle of ubiquitousness is introduced in that the act is understood to be committed in all the places in which the protagonist or the participant has carried out the action or, in the case of omission, should have carried it out; or in those in which the result envisaged by the law has been produced, or it should have been produced according to the protagonist.

Paragraph 3 of that article is even clearer, since it provides that Paraguayan law will apply to a person who participates in an act committed abroad when he or she has acted in national territory, even where there is no provision for a penalty under the law in the place in which it was committed. Accordingly, there is no room for impunity.

The CTC would appreciate a report on progress with the passage and implementation of the Aviation Code bill that was before the National Parliament at the time of delivery of the report.

The Aviation Code was approved by Act No. 1860 of 20 December 2001 and, in accordance with its article 345, will enter into force 180 days after its promulgation, which took place on 7 January 2002 and was officially published on 30 January 2002.

Subparagraph 2 (g)

Please describe the inter-agency mechanism for implementing this subparagraph, in particular as regards the interaction between the authorities responsible for narcotics control, financial tracking and security.

In this connection, mention must first be made of the provision in article 71 of the National Constitution to the effect that: "The State shall repress the production of and illegal trafficking in narcotics and shall also combat the unlawful consumption of such drugs". This is the responsibility of the National Anti-Drug Secretariat (SENAD) by virtue of Act No. 108/91.

Resolution No. 840/2000 of the Attorney-General's Office created Specialized Penal Units to work with SENAD in combating drug trafficking and related crimes

and, through the staff of the Office, with the country's criminal court judges dealing with civil rights guarantees.

In addition, as provided in Act No. 1015/97 (articles 26 and 27), SENAD works closely with other similar agencies referred to in the above-mentioned provisions in the "Prevention of Unlawful Money- or Property-Laundering Activities", in coordination with the Public Prosecutor's Office.

Moreover, Decree 15.975/97, entrusting additional responsibilities to SENAD, created the Financial Offences Investigation Unit (article 23). As part of its duties, if the Unit uncovers the existence of financial assets of suspicious persons or entities, it must inform the authorities.

Another approach adopted by SENAD, within the framework of the interaction between authorities responsible for drug traffic control and financial investigations, is joint and coordinated work with similar institutions in the MERCOSUR countries. This approach was successful in a joint operation known as Alianza VII, conducted in May 2002 in Paraguay, in which representatives of Brazil and Argentina participated.

How does Paraguay secure its extensive borders against unauthorized crossings?

The Ministry of the Interior, through the National Police and the Department of Migration, has permanent controls at authorized border crossings. Because of its length, the border is porous and vulnerable to illegal crossings.

Article 7 of Act No. 216 on the general organization of the armed forces of the nation specifies: "In order to achieve their goals, the armed forces of the nation shall: (a) Maintain the inviolability of land and river borders and of airspace". In pursuance of this Act, the armed forces have deployed their military units in order to prevent unauthorized crossings.

Subparagraph 3 (c)

While, under certain extradition agreements that Paraguay has made or proposes making with other States, terrorism is not considered a political offence, it appears that it is currently possible under the law of Paraguay for requests for extradition of alleged terrorists to be refused on political grounds in cases to which those agreements do not apply. Is that correct? If so, what action does Paraguay propose to ensure that refusal of extradition of alleged terrorists is not possible in those cases?

Concerning extradition agreements, chapter VI, section I, of the Code of Penal Procedure refers to communication between authorities and the duty to collaborate (article 144) and section II refers to all matters relating to extradition, both active and passive, and to precautionary measures. Article 5 of the National Constitution establishes that no period of limitation should apply to genocide or torture, or to disappearance of persons, kidnapping or murder for political reasons. The Ministry of Foreign Affairs, representing the executive branch, is responsible for proposing or concluding agreements with other States.

The promulgation of the Penal Code precludes any kind of impunity. If a request for extradition is refused, the principle of supplementary justice or the principle of penal law through representation may be applied.

Most of the extradition agreements concluded recently by Paraguay, as well as those which are to be signed and those which are currently under negotiation, contain specific clauses ensuring that acts of terrorism will in no circumstances be considered as a political offence and clarifying that grounds alleging a political goal or motive shall not suffice to confer a political character on this unlawful act.

In addition, the Supreme Court of Justice, as the highest jurisdiction of the Republic, has the power to review extradition requests refused by the competent judges, while that Court's criminal division may rule on the arguments adduced by the lower court to justify the refusal. The relevant provision is contained in article 149 of Act No. 1286/98 establishing the Code of Penal Procedure.

Accordingly, Paraguayan positive law relating to penal matters cannot be said to contain any provision whereby it could correctly be claimed that persons presumed to have committed terrorist acts could possibly benefit from refusal of a request made for their extradition on the grounds that the acts constituted political offences.

Subparagraph 3 (c)

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Paraguay in:

- **Becoming a party to the instruments to which it is not yet a party; and**
- **Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

The Government of Paraguay has since September 2001 embarked on the process of ratification of the international instruments that have been signed, as mentioned in the report submitted earlier. These instruments are the following:

- International Convention for the Suppression of Terrorist Bombings
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- International Convention against the Taking of Hostages
- International Convention for the Suppression of the Financing of Terrorism
- Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (within the purview of the International Civil Aviation Organization — ICAO).

The most recent instrument on the subject signed by Paraguay is the **Inter-American Convention against Terrorism** of 3 June 2002.

Subparagraph 3 (e)

Have the crimes set forth in the relevant international conventions been included as extraditable offences in the bilateral treaties to which Paraguay is a party?

It is indeed planned to include the terrorism-related offences and crimes set forth in the multilateral conventions as extraditable offences in the bilateral treaties to be signed by Paraguay. A specific example is the Extradition Treaty with Mexico, the text of which has already been agreed and which will be signed shortly.

In addition, an Agreement on measures to combat organized crime is about to be signed with the Italian Republic and a similar agreement will be signed with the Russian Federation; these agreements specifically envisage punishment of crimes and offences related to terrorism.

Subparagraph 3 (g)

The CTC would welcome a progress report on the proposed legislation relating to the status of refugees.

The proposed legislation relating to the status of refugees has been embodied in Act No. 1938/02, approved by the National Congress in June 2002 and promulgated by the executive branch on 2 July 2002. It has thus recently entered into force.

Paragraph 4

Has Paraguay addressed any of the concerns expressed in paragraph 4 of the resolution?

Paraguay does share the concern expressed in paragraph 4 of resolution 1373 (2001) concerning the close connection between international terrorism and other criminal phenomena and therefore in June 2002 adopted the Act governing all matters concerning "Arms, Ammunition and Explosives".

With regard to nuclear and radioactive substances, Paraguay has recently announced its intention to sign the Additional Protocol to the Safeguards Agreement between Paraguay and the International Atomic Energy Agency (IAEA). This will probably be done on the occasion of the Agency's forthcoming General Conference, to be held in September 2002, and will result in even tighter control of possible production of and trafficking in radioactive substances.

At the subregional and regional levels, various political arrangements for coordination to combat terrorism and related activities have been evolved both within the framework of MERCOSUR and in the Rio Group, the Summit of the Americas and the Ibero-American Summit.

Other matters

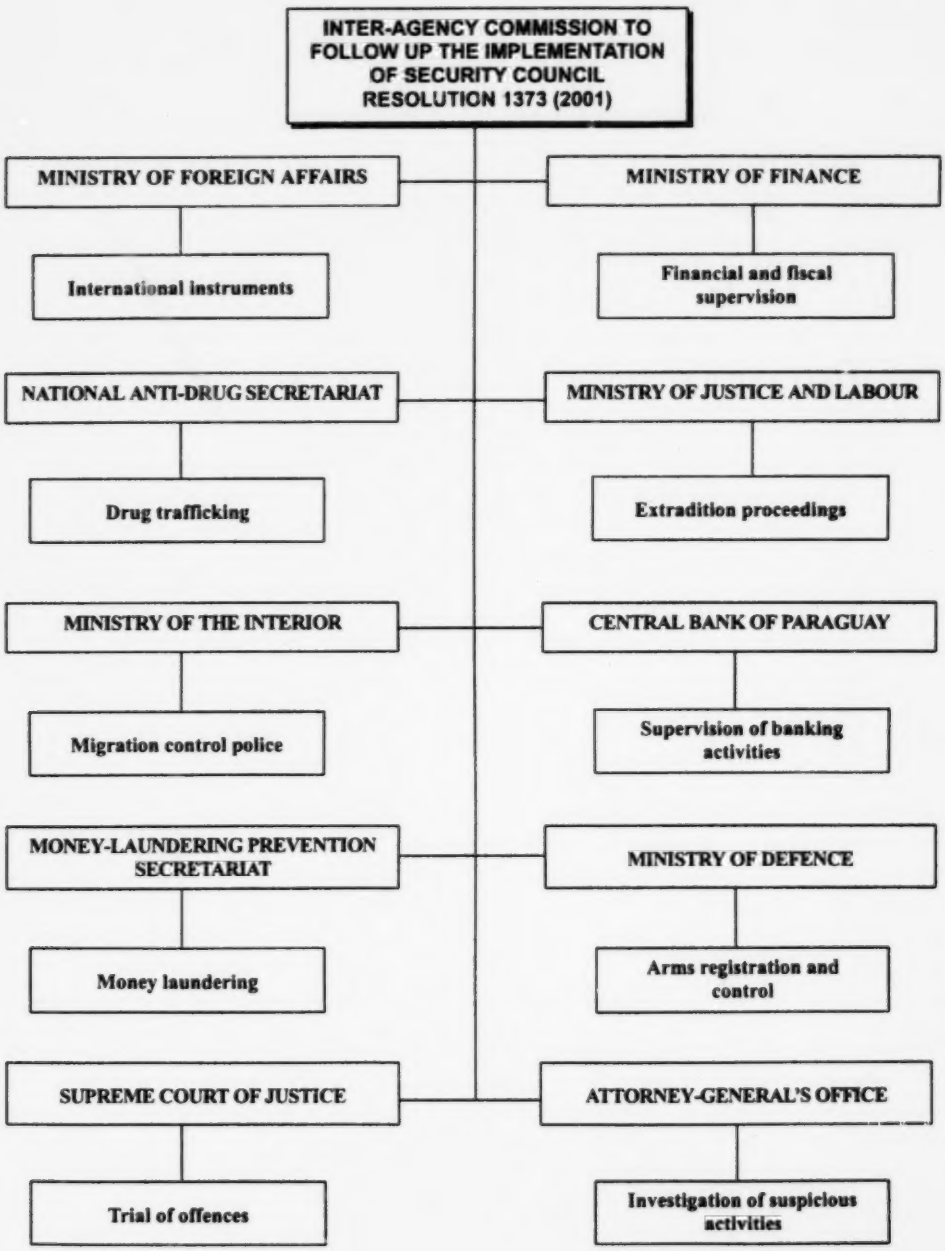
Could Paraguay please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution?

The Inter-Agency Commission established by Decree 15125 of the executive branch of the Republic of Paraguay dated 24 October 2001 is designed precisely to ensure joint coordination of efforts among the various State agencies and authorities as regards terrorism and related activities.

To this end, for example, the police and immigration control are the responsibility of the Ministry of the Interior and the Deputy Minister is a member of the above-mentioned Inter-Agency Commission; as regards customs, taxation and financial supervision authorities, the Ministry of Finance, through its Deputy Minister for Taxation, is the responsible body.

Lastly, as the representative of society, the Office of the Public Prosecutor and Attorney-General is responsible for investigating activities suspected of being related to terrorism, in close coordination with the judiciary's criminal court judges dealing with civil rights guarantees.

There is thus an inter-agency structure that functions dynamically, through regular meetings and exchange of information, so as to constantly enhance the progress made in efforts to combat terrorism and related activities.


INTER-AGENCY COMMISSION TO FOLLOW UP THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 1373 (2001)
MINISTRY OF FOREIGN AFFAIRS
International instruments
MINISTRY OF FINANCE
Financial and fiscal supervision
NATIONAL ANTI-DRUG SECRETARIAT
Drug trafficking
MINISTRY OF JUSTICE AND LABOUR
Extradition proceedings
MINISTRY OF THE INTERIOR
Migration control police
CENTRAL BANK OF PARAGUAY
Supervision of banking activities
MONEY-LAUNDERING PREVENTION SECRETARIAT
Money laundering
MINISTRY OF DEFENCE
Arms registration and control
SUPREME COURT OF JUSTICE
Trial of offences
ATTORNEY-GENERAL'S OFFICE
Investigation of suspicious activities

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/522).

The Counter-Terrorism Committee has received the attached supplementary report from Finland, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-52043 (E) 030902

Annex

Letter dated 11 July 2002 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Further to your letter dated 1 May 2002, I have the honour to forward to you the Government of Finland's second report to the Counter-Terrorism Committee established pursuant to paragraph 6 of Security Council resolution 1373 (2001) concerning counter-terrorism (see enclosure).

(*Signed*) Marjatta **Rasi**
Ambassador
Permanent Representative of Finland

Enclosure

Report to the Counter-Terrorism Committee of the Security Council in response to its letter of 1 May 2002

Subparagraph 1 (a)

Please could Finland provide a progress report on the review of its legislation for the implementation of the Financial Action Task Force's Eight Special Recommendations on terrorist financing?

The following amendments to the Act on the Detection and Prevention of Money Laundering (68/1998, hereinafter referred to as the Act on Money Laundering, AML) are under consideration: amendments due to the obligations set out in the special counter-terrorist recommendations of the FATF; amendments due to the provisions of Article 18 of the International Convention for the Suppression of the Financing of Terrorism; and amendments due to the revision of the European Union directive on prevention of money laundering. Chapter 32, section 1 of the Penal Code will also be amended to implement the measures set forth in the FATF recommendations. The Government Bill comprising these amendments will be submitted to Parliament in September – October 2002.

In accordance with the FATF recommendations, the objective and the scope of the AML will be extended so as to cover the financing of terrorism. The bill also proposes to extend the concept of a person under obligation to report a suspicion of money laundering to cover accountants, book-keepers, dealers and suppliers of valuables, auctioneers and persons assisting in legal matters through a business or professional practice. The proposed amendment to the Finnish Act is based on the Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (2001/97/EC, OJ L 344, 28 December 2001, p. 76—81) amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

According to the present AML, the bodies under obligation to report include credit and financial institutions, investment companies, fund management companies and custodians, co-operative societies engaged in the savings fund activities, insurance companies, agencies of foreign insurance companies, insurance brokers, pawnshops, entities engaged in the activities relating to betting, betting on the totalizator or to casinos as well as entrepreneurs or entities acting as agents collecting participation coupons and fees related to the results of the pools, races and betting on the totalizator, real estate businesses and apartment rental agencies engaged in renting business premises, and central securities depositories.

These bodies are under obligation to identify customers and to take note of any irregular or suspicious transactions. They are required to report any suspicious transactions to the Money Laundering Clearing House at the National Bureau of Investigation . Once the new Act enters into force, these bodies are obliged to report also any suspected financing of terrorism.

The Act on Money Laundering provides that a body under the reporting obligation has the possibility to refuse transactions. Along with the amendments to the Act, the scope of the provision in question will be extended to the financing of terrorism. Once the Act is in force, credit and monetary institutions may refuse to receive funds, if there is reason to believe that the assets would be used for the financing of terrorism.

As funds held by a person or entity connected with terrorism need not be laundered money, please outline how Finnish law prevents the holding of such funds in Finnish financial institutions.

The due diligence obligation set forth in the current Act on Money Laundering, as well as in the Act on Credit Institutions, Act on Investment Firms and Act on Mutual Funds, aims at ensuring that financial institutions observe strict know-your-customer rules and follow good banking practice and good securities market practice.

Financial institutions have not only an obligation to identify their customers but also a duty to know their customers' operations as well as the grounds for and purpose and reason of using the respective institution's services. If the financial institution does not have sufficient information concerning the background or business of the customer, it is difficult to assess the suspicious nature of any transaction. From the financial institutions' viewpoint, largely the same know-your-customer rules also apply to transactions related to the funding of terrorism.

The Financial Supervision Authority (FSA) has a duty to ensure that the supervised entities consistently observe good banking practice and good securities market practice. The requirements of due diligence and prevention of money laundering are part of the risk management and internal controls of supervised entities, which are the areas the FSA has focused on in its supervisory action. The FSA makes inspection and supervisory visits to the supervised entities to ensure that their operations and internal risk management and control systems are sufficiently advanced so that internal and external criminal activities can be identified and prevented at an early stage. The FSA is also obliged to inform the Money Laundering Clearing House if it notices anything in the operations of a supervised entity that gives reason to suspect negligence with regard to the AML rules.

> *Are natural or legal persons (e.g. financial institutions, attorneys, notaries and other intermediaries) required to report suspicious transactions to the public authorities? If so, what penalties apply to persons who omit to report either wilfully or by negligence?*

Pursuant to section 3 of the Act on Money Laundering, financial institutions are required to report any suspicious transactions to the Money Laundering Clearing House. These persons shall notify the Money Laundering Clearing House without delay, in accordance with section 10 of the AML, of any business activities where there is reason to doubt the legal origin of the assets or other property involved in the activities. The afore-mentioned bill proposes that the concept of suspicious transactions referred to in section 10 be extended to also cover business activities suspected of involving terrorist financing.

Under Chapter 32, section 1, subsection 2, paragraph 3 of the Penal Code, a person shall be sentenced for a receiving offence if he fails to report a suspicious transaction as referred to in section 10 of the Act on Money Laundering or, in violation of the prohibition provided for in section 10, discloses a report referred to therein. The person shall be sentenced to a fine or to imprisonment for at most six months.

A Government Bill concerning the amendment of certain provisions of the Penal Code and certain acts involving financial offences (Government Bill HE 53/2002 vp) proposes to incorporate the failure to report a suspicion of money laundering into the AML as a new section 16 a. Any person failing to comply with the reporting obligation could then be sentenced to a fine. Be it also noted that a failure to report a suspicion of money laundering may constitute an intentional money laundering offence or an offence of negligence. If the scope of the Act on Money Laundering is widened as proposed, consequently extending the concept of a suspicious transaction to cover business activities suspected of involving terrorist financing, the provisions on money laundering offences committed deliberately or of negligence would become applicable to the actions of a person obliged to report a suspicion of money laundering if he or she fails to examine the background of a suspicious transaction.

A person sentenced for a money laundering offence committed of negligence could, if the afore-mentioned bill is passed, be sentenced to a fine or to imprisonment for at most two years. The bill also

includes a proposal to raise the maximum penalty for a deliberate money laundering offence from six months to two years and for an aggravated money laundering offence from four years to six years.

Subparagraph 1 (b)

Please provide a progress report on the amendments to the Penal Code under way and outline the relevant provisions

The Act on the implementation of the Convention for the Suppression of the Financing of Terrorism (Government Bill 43/2002 vp) was approved by the Parliament in June. The Penal Code, section 34, was amended at the same time so as to establish the financing of terrorism as a criminal offence. A person found guilty of the financing of terrorism will be sentenced to imprisonment for at least four months and at most eight years. The criminal liability of a legal person will also be extended to apply to the financing of terrorism.

As regards the other amendments to the Penal Code, a Government Bill on a new Chapter concerning terrorist crimes has been submitted to experts for comments. The government bill also includes terrorism-related amendments to the Coercive Measures Act. The provisions of the framework decision of the Council of the European Union on combating terrorism and, where applicable, the requirements of the UN Security Council Resolution 1373 have been taken into account in the preparation of the bill. The provisions implementing the Convention for the Suppression of the Financing of Terrorism have also been taken into account.

The Bill includes a proposal to incorporate a separate Chapter concerning terrorist offences in the Penal Code as a new Chapter 34 a. The Chapter would contain provisions on terrorist offences, preparation of terrorist offences, leading of a terrorist group, participation in the activities of terrorist groups, financing of terrorism, and definition of the terrorist purpose of an offence, as well as a provision on the criminal liability of legal persons. The provision on the financing of terrorism would be based on the International Convention for the Suppression of the Financing of Terrorism. It is therefore proposed that the provision included in the Act implementing the Convention be inserted in the new Chapter of the Penal Code on terrorist offences as such or with minimal adjustments.

The instrument of ratification regarding the International Convention on the Suppression of the Financing of Terrorism was deposited with the Secretary General of the UN on 28 June, 2002. The Convention, as well as the related legislation will therefore enter into force on 28 July, 2002. The Government Bill concerning the other amendments to the Penal Code will be submitted to Parliament in the autumn of 2002.

Subparagraph 1 (c)

It is not clear how Finland would deal with the request of a country outside the European Union to freeze the assets and resources in Finland of a person or entity supporting terrorism in that country. Does the amendment referred to in the reply to this sub-paragraph cover requests from such countries? Please provide a progress report on the amendments.

The Act amending the Act on the Enforcement of Certain Obligations of Finland as a Member of the United Nations and of the European Union ("Sanctions Act", 659/1967 as amended by the following Acts: No 705/1997, No 191/2000 and No 364/2002) as well as the Act (No. 365/2002) amending Chapter 46, section 1 (11) of the Finnish Penal Code entered into force on 22 June 2002.

As foreseen in the report submitted to the CTC on 21 December 2001, the Sanctions Act and the Penal Code, as amended, provide for the penalties to be imposed when the European Union sanctions, imposed under certain provisions (article 60, 301 or 308) of the Treaty establishing the European Union, are violated.

According to Chapter 46, section 1 (11) of the Penal Code, a person who violates or attempts to violate a regulatory provision in a sanctions regulation, adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Community, shall be sentenced for a regulation offence to a fine or to imprisonment for at most four years. Due to these amendments, it is possible for Finland to impose sanctions if the EU regulations implementing SC resolutions 1373(2001) and 1390(2002) are infringed.

The existing Finnish legislation does not provide for a possibility to freeze assets of individuals or entities unless the obligation is based on sanctions imposed by the UN Security Council or the Council of the European Union.

Subparagraph 1 (d)

What preventive control and surveillance has Finland put in place to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for financing terrorism?

See sub-paragraph 1 a) above.

The Ministry of the Interior has set up a working party to review the existing legislation and to make recommendations on how to enhance the control of fundraising by charitable organizations, including religious organizations.

Subparagraph 2 (a)

It is noted that Finland is a party to a number of conventions on the regulation of trade in arms. Please outline the laws which give effect to the conventions, including those which make the relevant acts offences.

Council Directive 91/477/EEC of 18 June 1991 on the control of the acquisition and possession of weapons as well as Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives for civil uses in relation to transfer of cartridges were implemented by the Firearms Act of 1 March 1998. The provisions of the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders and the provisions of the Convention implementing the Schengen Agreement (signed on 19 June 1990), related to firearms, firearm components, cartridges and specially dangerous projectiles, were also implemented by the Firearms Act.

Finland signed the United Nations Convention against Transnational Organised Crime on 12 December 2000 and the supplementing Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition in January 2002. Finland is preparing the ratification of the Convention and its supplementing Protocol. It should be noted that the supplementing Protocol requires that Council Directive 91/477/EEC of 18 June 1991 on the control of the acquisition and possession of weapons be amended.

An unofficial English translation of the Firearms Act is attached hereto. The newest amendments which entered into force on 1 March 2002 have not been translated yet.

Please inform the CTC when the new penal provisions on offences relating to terrorist groups have been incorporated into the domestic law, and provide an outline of the relevant provisions?

The commission of offences as a member of a group organized for the purpose of committing serious offences is already a ground for increasing the punishment under Chapter 6, section 2 of the Penal Code. In the light of the Government Bill on the amendment of the legislative provisions concerning the general principles of criminal law (Government Bill HE 44/2002 vp), the substance of the provision would remain the same.

Participation in the activities of a criminal organization has been proposed to be established as a punishable offence. A Government Bill to that effect (Government Bill HE 183/1999 vp) has been submitted to Parliament. Pursuant to the Bill, participation in the activities of a criminal organization would be considered punishable when the participation is active and the objective of the activity is to commit offences, where the maximum penalty provided for is imprisonment for at least four years, or when its objective is ethnic agitation. Participation could be punished if the main offence is actually committed, and the applicable sentence would be a fine or imprisonment for at most one year. If a person can be considered an accomplice in respect of an offence committed by a criminal organization, he would be sentenced for having actually committed the offence in question, the punishment being considerably more severe.

The proposed Chapter 34 a on terrorist offences to be incorporated in the Penal Code (see sub-paragraph 1 b above) would contain provisions criminalizing participation in the activities of a terrorist organization and leading of a terrorist organization. Under the provision prohibiting participation in the activities of a terrorist organization, for example the founding of a terrorist organization, recruitment of members, arming, training and provision of supplies essential for the group's activities would be subject to punishment.

Subparagraph 2 (b)

Please inform the CTC whether there are any arrangements to provide early warning to countries outside the European Union.

If a threat were to appear, the relevant countries within as well as outside the EU would be informed immediately through the international channels of cooperation of the Finnish Security Police. No specific arrangements have been made to provide a system of early warning in respect of EU or other countries.

Please provide information on the mechanisms for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security with particular regard to the border controls preventing the movement of terrorists.

The National Bureau of Investigation investigates serious organised and professional crime in Finland. The Money Laundering Clearing House is a unit of the National Bureau of Investigation. Co-operation between the different units of the Bureau, as well as between local police departments and other authorities is efficient. Cooperation between the police, customs and border management authorities is regulated by law.

Subparagraph 2 (c)

Please explain why section 37 of the Aliens Act refers to the possibility of the commission by a foreign national seeking entry to Finland of an offence only in Finland or another Nordic country, as opposed to any other country.

The existing section 37, subsection 1, paragraph 5 of the Aliens Act refers to offences committed in Finland or another Nordic country. An overall reform of the Aliens Act is being prepared with a proposal to withdraw the reference in question.

For example sabotage is provided for in section 37, subsection 1, paragraph 6 of the Aliens Act, and the paragraph does not include the afore-mentioned territorial restrictions. This paragraph can be applied to terrorist acts.

Subparagraph 2 (d) and (e)

How does Finland prevent (or how does it propose to prevent) persons engaged in legitimate activities in Finland form supporting terrorist activities outside Finland?

The afore-mentioned activities could, depending on their nature, be punished pursuant to the proposed provisions concerning participation in the activities of a terrorist organization, financing of terrorism or preparation of a terrorist offence. The provisions regarding the financing of terrorism will provide the authorities with a possibility to intervene in the fund-raising of terrorist organizations at an early stage and consequently prevent the use of such funds to commit terrorist acts.

Please indicate what are the "international offences" under the Finnish Penal Code

International offences are provided for in Chapter 1, section 7 of the Penal Code, and regardless of the legislation of the territory they are committed in, the punishment to be applied to such offences is based on an international agreement binding on Finland or another international provision binding on Finland. Further provisions on the application of section 7 may be given by Government decree.

The Decree concerning the application of section 7 of the Penal Code defines the following offences as international offences:

1) Commission or preparation of the crime of counterfeiting currency, or the use of counterfeited currency, referred to in the International Convention for the Suppression of Counterfeiting Currency (Finnish Treaty Series (FTS) 47/1936) (added by Act No. 370/2001); and counterfeiting in respect of euro referred to in Article 7, paragraph 2 of the Council framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (Official Journal L 140, 14/06/2000, p. 0001-0003);

2) Such war crime, violation of human rights in a state of emergency, serious war crime or other punishable criminal act which must be considered a grave breach of the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Relative to the Treatment of Prisoners of War, and Relative to the Protection of Civilian Persons in Time of War (FTS 8/1955), as well as the Protocol Additional to the Geneva Conventions, relating to the protection of victims of non-international armed conflicts (FTS 82/1980);

3) Commission and preparation of the crime of genocide referred to in the Convention on the Prevention and Punishment of the Crime of Genocide (FTS 5/1960);

4) Commission, preparation and facilitation of a narcotics offence or aggravated narcotics offence or the commission of an concealment offence as referred to in the Single Convention on Narcotic Drugs of 1961 (FTS 43/1965), the Protocol amending the Single Convention on Narcotic Drugs of 1961 (FTS 42/1975), the Convention on psychotropic substances (FTS 60/1976), and the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (FTS 44/1994);

5) Such seizure of aircraft or other punishable act by which the perpetrator unlawfully, by force or threat thereof, seizes or exercises control of an aircraft, and which must be considered an offence referred to in the Convention for the suppression of unlawful seizure of aircraft (FTS 62/1971);

6) Such criminal traffic mischief or criminal mischief, preparation of endangerment or other punishable act which must be considered an offence referred to in the Convention for the suppression of unlawful acts against the safety of civil aviation (FTS 56/1973);

7) Murder, or attack upon the person or liberty of an internationally protected person, or violent attack upon the official premises, the private accommodation or the means of transport of such a person, or a threat thereof, referred to in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (FTS 63/1978);

8) Hostage-taking or other deprivation of liberty referred to in the International Convention against the Taking of Hostages (FTS 38/1983);

9) Such torture for the purpose of obtaining a confession, and assault or aggravated assault, which must be considered torture within the meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (FTS 60/1989);

10) Such nuclear device offence, endangerment of health, fraudulent use of nuclear energy or other punishable act directed at or committed by using nuclear material which must be considered an offence referred to in the Convention on the Physical Protection of Nuclear Material (FTS 72/1989);

11) Such deprivation of liberty or aggravated deprivation of liberty, kidnapping, criminal mischief, endangerment or other punishable act that must be considered an offence referred to in the European Convention on the Suppression of Terrorism (FTS 16/1990);

12) Such killing, assault, deprivation of liberty or kidnapping inflicted upon a person on board a ship or aircraft, or seizure or theft of or damage caused to property on board a ship or aircraft, that must be considered piracy within the meaning of the United Nations Convention on the Law of the Sea (FTS 50/1996);

13) Violation of the prohibition of chemical weapons referred to in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (FTS 19/1997);

14) Such unlawful act against the safety of maritime navigation as is referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (FTS 11/1999);

15) Such unlawful act against the safety of fixed platforms located on the Continental Shelf as is referred to in the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (FTS 44/2000);

16) Such offence against United Nations and associated personnel as is referred to in the Convention on the Safety of United Nations and Associated Personnel (FTS 2—3/2001).

17) Such unlawful and intentional delivery, placement, discharge or detonating of an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility as is referred to in the International Convention for the Suppression of Terrorist Bombings.

A punishable attempt of and punishable participation in the above-mentioned offences are considered international offences.

Upon the implementation of the International Convention for the Suppression of the Financing of Terrorism, the offences referred to therein will also be established as international offences.

If the definition of a certain offence is not directly based on an international agreement or other binding international provision, the offence cannot be defined as an international offence by decree. In such a case, however, it is possible to enact an Act of Parliament for that purpose.

Upon the implementation of the Comprehensive Nuclear Test-Ban Treaty, the offences referred to therein were established as international offences by adding a new subsection 2 to section 7 of Chapter 1 of the Penal Code, although it was not required by the Convention. The amendment has not come into force yet.

Furthermore, the offences included in the proposed Chapter 34 a of the Penal Code on terrorist crimes are likely to be established as international offences by law, although the Council framework decision concerning the suppression of terrorism does not necessarily require it.

Please explain whether the jurisdiction of the Finnish courts would extend to foreigners in Finland who are accused of "international offences" under the Finnish Penal Code.

Under Chapter 1, section 7 of the Penal Code, the jurisdiction of Finnish courts covers acts which are not necessarily directly connected with Finland. Pursuant to this section, mere presence in the Finnish territory is sufficient for prosecution in a Finnish court against a foreign person suspected of an international offence.

Subparagraph 2 (f)

This sub-paragraph requires assistance to be provided to States in need in connection with criminal investigations or proceedings. Is there any law which allows this assistance to be provided to States outside the European Union? Is the Finnish Act on International Legal Assistance in Criminal Matters (Act. No. 4/1994) relevant?

The provisions of the Act on International Legal Assistance in Criminal Matters (4/1994) are applicable to international legal assistance in criminal matters that are within the jurisdiction of the requesting Finnish or foreign authority. The act applies both to international legal assistance in individual criminal matters being handled by Finnish authorities and to how and under what conditions Finnish authorities give legal assistance in a criminal matter handled by a foreign authority. Legal assistance in criminal matters can be given under the above-mentioned act regardless of whether there is an existing agreement on legal assistance between Finland and a second state, and the provision of legal assistance does not require reciprocity. The act also renders possible the provision of legal assistance to states not members of the European Union.

Legal assistance referred to in the act may include, among others, the service of decisions, summons and other documents relating to the handling of case in question, hearing of witnesses and experts as well as of other persons involved in the case, statements given by experts, inspections, accepting of documents and evidence as well as coercive measures to obtain evidence or to ensure the enforcement of forfeiture.

In respect of legal assistance, Finnish legislation does not require dual punishability, and therefore, legal assistance can be given in respect of such acts as are not offences under the Finnish law. The use of coercive measures, however, is an exception in respect of which dual punishability is required.

The Money Laundering Clearing House has the right to give Finnish and foreign authorities information on matters concerning the prevention and detection of money laundering. This information-sharing is not limited to the member states of the European Union. As the afore-mentioned amendments to the Act on Money Laundering enter into force, information related to the financing of terrorism can be shared in the same way to States within as well as outside the European Union.

Subparagraph 3 (a)

Does Finland share operational information with States outside the European Union and is there an established procedure for such exchange of information?

Finland exchanges operational information with non-Member States through the international channels of cooperation of the Finnish Security Police.

Subparagraph 3 (d) and (e)

Have the crimes set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Finland is party?

In Finland, the provisions governing extradition are included in the Extradition Act (456/1970) and the act concerning extradition between Finland and other Nordic Countries (270/1960). Finland allows extradition directly under national law and therefore does not require the existence of a bilateral extradition agreement. Nor does Finland require reciprocity to enable extradition.

Under the Extradition Act, an offence is extraditable if the act for which extradition is requested is an offence for which the maximum penalty provided in Finnish legislation is imprisonment for at least one year or if, in Finland, it would in corresponding circumstances be considered such an offence. The crimes set forth in the conventions referred to in sub-paragraph 3 (d) of the resolution are considered extraditable crimes in Finland. The penalties for these offences are severe enough so that Finland may extradite directly pursuant to national law.

Although Finland may extradite directly pursuant to national legislation, Finland is party to the 1957 European Convention on Extradition and its second additional protocol. In addition, Finland has implemented the 1995 and 1996 EU Conventions relating to extradition.

Finland has also concluded a number of bilateral agreements on extradition, some of which have been replaced by the 1957 European Convention. Finland has existing agreements with the United States, Australia, Canada, Kenya, Sri Lanka, Uganda and New Zealand. Only part of the agreements are based on a list of extraditable offences included therein. There has been no need to revise the lists because, as mentioned above, Finland may extradite directly pursuant to national legislation. The lists may, however, be considered to cover the crimes set forth in the conventions referred to in sub-paragraph 3 (d).

Subparagraph 3 (g)

Please explain whether extradition is governed by legislation and list the countries, if any, with which bilateral treaties on extradition have been concluded.

See sub-paragraphs 3 d) and e) above.

Paragraph 4

Has Finland addressed any of the concerns expressed in paragraph 4 of the Resolution?

The connection between terrorism and organized crime and the means of detection of such connections have been discussed within the Task Force on the Organized Crime in the Baltic Sea Region. In this forum, Finland bears the main responsibility for the measures against money laundering, which relate to suppressing terrorism.

Notes:

The following attachments are on file with the Secretariat and are available for consultation:

- **Act on preventing and clearing money-laundering (68/1998), unofficial English translation;**
- **Aliens Act (537/1999), Section 37, unofficial English translation;**
- **Organizational chart of the Financial Supervision Authority Organization.**

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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/448).

The Counter-Terrorism Committee has received the attached supplementary report from Mauritius, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 16 July 2002 from the Permanent Representative of Mauritius to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to forward the response (with attachments)* of the Government of Mauritius to the questionnaire of the Counter-Terrorism Committee regarding the Mauritius report on the measures taken to implement Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) B. **Gokool**
for Jagdish **Koonjul**
Ambassador
Permanent Representative

* The attachments are on file with the Secretariat and are available for consultation.

Enclosure

Mauritius response to the questions contained in the letter from the Chairman of the Counter-Terrorism Committee dated 15 April 2002

Introduction

In December 2001, when Mauritius submitted its First Report pursuant to para (6) of Resolution 1373 (2001), the United Nations Counter-Terrorism Committee (CTC) was informed of the measures put in place despite the absence of appropriate legislation to combat international terrorism. However, the resolve of the Government of Mauritius to put in place appropriate legislation was conveyed.

The Government of Mauritius has made diligent efforts and the following pieces of legislation have now been enacted:

(i) The Prevention of Terrorism Act 2002, and
(ii) The Financial Intelligence and Anti-Money Laundering Act 2002
(iii) The Prevention of Corruption Act 2002

Administrative Measures since September 2001

The basis of the measures taken by the Bank of Mauritius as stated in **Sub-Paragraph 1a** of the Report submitted by Mauritius to the CTC in December 2001 are the regulatory function vested upon it under the legislation establishing the Bank of Mauritius (Central Bank) and the Banking Act 1988.

Measures adopted in the first instance as mentioned in the National Report of December 2001 were primarily designed to instill discipline in the Banking, Non-Bank Deposit Taking Institutions and the Money Changers and Foreign Exchange Dealers sectors by encouraging institutions falling under the jurisdiction of the Central Bank to ensure that they are not abused by perpetrators of terrorist acts.

The measures requiring those institutions to report to the Central Bank (Bank of Mauritius) any accounts or transactions which the individuals and entities mentioned in the (US) Executive Order List and the list of the UNSC Sanctions Committee on Afghanistan [(New Consolidated List) pursuant to Resolutions 1267,1269,1333 and 1390] and the list of 27 December 2001 of the Council of European Union, were means of gathering initial intelligence on those individuals and entities named in the above-mentioned lists, which would have enabled prompt action once the legislative arsenal became operational.

Similarly the Financial Services Commission which regulates activities of the Offshore Management Companies, Stock Exchange, Foreign Insurance Companies, Fund Management Companies and Trusts and International Companies under the Financial Services Development Act has gone through its data base and urged professional associations in the financial services industry to conduct appropriate checks on their files and records.

The institutions falling under the jurisdiction of the Central Bank and the Financial Services Commission **have so far not reported any transaction with the suspected individuals and entities having terrorist links.**

Prevention of Terrorism Act (POTA) 2002

The Prevention of Terrorism Act 2002 (POTA) which came in force in Mauritius on 16 March 2002, clearly prohibits any form of suspected terrorist activity. The Act provides for the prohibition of acts of terrorism and of offences

related to terrorist meetings, hostage taking, support of acts of terrorism, harbouring of terrorists and obstruction of investigations pertaining to terrorist property. These offences are visited by penalties, which duly reflect their seriousness.

The Act also allows the Commissioner of Police to apply to a Judge in Chambers to have any association of 2 or more persons engaging in the pursuit of acts of terrorism declared a **proscribed organization**. It will be an offence to belong to or to provide any form of assistance to a proscribed organization. Since it will be for a Judge to declare an entity to be a proscribed organization under Section 4 of the Act, this provision ensures absolute fairness and impartiality in the decision-making process and eliminates possibility of abuse by the Executive.

The Act further makes provision for persons listed by the UNSC, the Council of the European Union or any approved State or Organization to be declared suspected international terrorists and any listed organization to be declared international terrorist groups under Section 10 of the Act. This declaration will be reviewable by the courts under administrative law principles. Regulations are being prepared to provide for the freezing of assets and funds of suspected international terrorists and international terrorist groups.

An entire Part of the Act is devoted to terrorist cash and property, in view of the financial and monetary ramifications of modern-day terrorism. The Act also provides for seizure of suspected terrorist money and for its detention (upon an Order from a Judge in Chambers), for the attachment of property belonging to any suspected terrorist, (on application to a Judge in Chambers) and also provides for property tracking with respect to a person suspected of having committed, of committing, or of being about to commit an act of terrorism or of being in possession of terrorist property.

Consequential amendments have also been brought to the Immigration Act for suspected international terrorists to be declared prohibited immigrants or to be deprived of Mauritian citizenship.

Copy of the Prevention of Terrorism Act is at Annex I.

The Financial Intelligence and Anti-Money Laundering Act (FIAMLA) 2002

While scrutinizing the Economic Crime and Anti-Money Laundering Act of June 2000, Government found that the said legislation was insufficiently comprehensive to combat fraud and corruption and also to meet developments on both the local and international scenes. **The Prevention of Corruption Bill and the Financial Intelligence and Anti-Money Laundering Bills were therefore presented to the National Assembly and received assent on 27 February 2002. With the proclamation and entry into force of the Prevention of Corruption Act 2002, the Economic Crime and Anti-Money Laundering Act 2000 was repealed.**

The Financial Intelligence and Anti-Money Laundering Act provides for the establishment of a Financial Intelligence Unit and a Review Committee since financial intelligence gathering is crucial in the fight against money laundering and its linkage with the financing of terrorism.

Part II of the Act sets out the acts or activities which constitute money laundering offences. Section 3 which creates the offence of money laundering covers property representing proceeds of crime; "crime" has the same meaning as in the Criminal Code. Section 3 also imposes on banks, financial institutions, cash dealers and professionals such as accountants, lawyers etc, obligations to take such measures as are reasonably necessary to prevent their services being used as a channel for money laundering.

Section 4 and 5 of the Financial Intelligence and Anti-Money Laundering Act 2002 re-enact the provisions relating to the offences of conspiracy to commit the offence of money laundering and payment in cash in excess of a specified amount.

Section 9 of the Act provides for the establishment of the Financial Intelligence Unit, which will be essentially a central intelligence gathering Unit to compile information about money laundering activities and

other proceeds of crime and make it available to the investigative authorities. Previously suspicious transaction reports were made to different bodies.

Furthermore, the Financia! Intelligence Unit will benefit from "Mutual Assistance" once it becomes a Member of the EGMONT Group which consists of Financial Intelligence Units from over 50 countries and has as objective the improvement of support for its members' national anti-money laundering program and involves inter-alia the expansion and systemization of financial intelligence information and training of investigative personnel.

The Review Committee, whose Chairperson shall be a professional of long standing legal or judicial experience assisted by two members of high repute, shall consider whether to disseminate information from the FIU to investigatory or supervisory authorities. The Review Committee may.

(i) consent to the dissemination of information by the FIU to the investigatory or supervisory authorities with a view to determination of any criminal liability and the prosecution of, or the action against, the persons accordingly; or

(iii) refer the information back to the FIU with a view to determining whether supporting information can be found which would justify a subsequent reference to one of the investigatory or supervisory authorities.

This Act further provides for the exchange of financial information between supervisory authorities and mutual assistance among countries in relation to money laundering and suspicious transactions.

Copy of the Financial Intelligence and Anti-Money Laundering Act is at Annex II

Prevention of Corruption Act (POCA) 2002

This Act introduces new corruption offences, punishable with severe penalties, to more effectively combat the scourge of corruption.

The Act further provides for the creation of a new institution known as the Independent Commission Against Corruption (ICAC) in replacement of the Economic Crime Office with power to:

(i) detect and investigate corruption offences;

(ii) investigate money laundering offences;

(iii) better educate the public on the evils of corruption.

The Independent Commission Against Corruption is fully operative in Mauritius as from 1 June 2002 and has taken over all investigative functions of the former Economic Crime Office

Moreover the Prevention of Corruption Act 2002 provides for power of restraint and forfeiture of the proceeds of corruption and money laundering and for obtention and provision of assistance from and to Foreign States and for Extradition.

Copy of the Prevention of Corruption Act 2002 is at Annex III

Sub-Paragraph 1(b):

The Economic Crime and Anti-Money Laundering Act appears to be particularly comprehensive in terms of dealing with activities designed to conceal the source of 'tainted funds'. However, it does not appear at this stage to address the question of funds, of whatever origin, that are destined for criminal, especially terrorist, purposes. Are there any plans to extend its operation to cover such funds or to introduce any other legislation to address the problem of terrorist financing?

As stated above, the Economic Crime and Anti-Money Laundering Act was repealed with the entry into force of the Prevention of Corruption Act 2002 on 1 April 2002.

However the question of funds destined for criminal, specially terrorist purposes are extensively dealt with in Section 11 of the Prevention of Terrorism Act 2002 in relation to suppression of financing of international terrorism and in Part III which deals **inter-alia** with terrorist funding, terrorist cash and terrorist property irrespective of their origin.

Sub-Paragraph 1(c):

The Report states that the Supreme Court is able to order the freezing of assets under the Economic Crime and Anti-Money Laundering Act despite the fundamental right in the Mauritius Constitution to protection from deprivation of property. Does the abrogation of that fundamental right that is implicit in that statement present any practical difficulties for the effective freezing of assets in order to meet the requirements of the Resolution? For example, does the Constitution permit an abrogation of the fundamental right but only for a limited time, thereby giving rise to a need for periodic renewal of temporary legislation? Or does the freezing legislation depend for its effectiveness on meeting some test laid down in the Constitution that might be subjected to particularly narrow interpretation?

The freezing of assets under section 25 of the Economic Crime and Anti-Money Laundering Act is available in relation to pending proceedings for "a money-laundering offence or any economic offence". Does the concept of "economic offence" extend to offences in which the intended use is the distinguishing characteristic, particularly if the economic proceeds are intended for use in support of criminal (and especially terrorist) activities? Can the law also be applied in the case of the financing of terrorism? Given that most money-laundering laws enacted worldwide have so far concentrated on the source rather than the destination of funds, the CTC would be grateful to know Mauritius intends to extend the Economic Crime and Anti-Money Laundering Act to deal with financial transactions related to the financing of criminal activities, particularly terrorist activities.

As stated above, the Economic Crime and Anti-Money Laundering Act was repealed with the entry into force of the Prevention of Corruption Act 2002 on 1 April 2002 and therefore the concept of "economic offence" is no longer relevant as has been adequately addressed by the POCA, POTA and FIAMLA.

Section 62 of the Prevention of Corruption Act 2002 now provides for the freezing of proceeds of corruption and money laundering while Sections 13 and 16 of the Prevention of Terrorism Act 2002 relate to the detention of terrorist cash and attachment of property related to terrorist activities. In addition, regulations may be made under Section 10 of the POTA to provide for the freezing of assets of any suspected international terrorist or international terrorist group.

In respect of the POCA, the Order will be issued by the Supreme Court, on an application by the Director of Public Prosecutions. In respect of the POTA, the Order would be made by the Judge in Chambers.

Section 8(4) (iv) of the Constitution of Mauritius allows the law to provide for "deprivation of property" in the execution of orders of courts.

Section 11 of the POTA explicitly deals with the suppression of financing of international terrorism and Part III of same deals with seizure and detention of terrorist cash, terrorist funding, attachment of terrorist property and property tracking.

Section 3 of the FIAMLA also deals with the possession, concealment, disguise etc in part or indirectly with the proceeds of any crime.

Sub-Paragraph 1(d):

The offences and the supervisory mechanism described in relation to this sub-paragraph appear to be aimed at money-laundering and foreign exchange matters and, perhaps, matters related to prudential supervision (for example, of insurance companies and superannuation funds), rather than matters connected with terrorism and other criminal purposes not specifically economic in character. What, for these purposes, constitute 'suspicious transactions?' Does the proposed legislation address this question?

Assuming the eventual application of section 21 of the Economic Crime and Anti-Money Laundering Act to offences relating to the financing of terrorism, is the special exception in subsection (3) relating to legal professional privilege considered justified in such cases or is it proposed that the operation of this sub-section be limited?

Does Mauritius have any provisions for regulating alternative money transfer agencies? Please outline them.

How does the financial tracking system ensure that funds received by bodies such as charitable associations are not diverted from their stated purposes to terrorist activities?

The activities covered under (1d) of the UNSC Resolution 1373 have been dealt with in the Prevention of Terrorism Act 2002 and breaches thereof would constitute a crime under that Act.

Under the Financial Intelligence and Anti-Money Laundering Act 2002, dealings in the proceeds of terrorism will amount to money laundering offences.

Suspicious transactions in respect of terrorism are now dealt with in the Financial Intelligence and Anti-Money Laundering Act 2002 as defined in Section 2 of the FIAMLA.

All money transfer agencies are regulated in Mauritius.

Accordingly, money changers and foreign exchange dealers are regulated under the Foreign Exchange Dealers Act 1995. Banks and deposit taking institutions are regulated under the Bank of Mauritius Act and the Banking Act 1988 and Non-Bank Financial service providers are regulated under the Financial Services Development Act 2001.

As regards charitable institutions, Guidance Notes have been issued by the Regulator to the operators in the Banking and Financial sectors laying down guidelines in that respect. ***A copy of the relevant part of the Guidance Notes is at Annex IV.***

Sufficient safeguards have been provided for in the Registrar of Associations Act 1982 with respect to the collection and expenditure of funds. The Registrar is moreover empowered to inspect and audit the books of a registered association and its bank and cash balances. ***Copy of the Registrar of Associations Act is at Annex V.***

Further it is to be observed that the term ***"person"*** used in the Prevention of Terrorism Act 2002 captures **charitable institutions**.

The provision relating to legal professional privilege, [Section 21(4)] in the Economic Crime and Anti-Money Laundering Act (2000) which has been repealed, has been re-enacted in the FIAMLA [Section 14(2)]; the proviso is considered adequate (i.e. whenever knowledge of the transaction has been communicated to a law practitioner with a view to the furtherance of a criminal or fraudulent purpose, the law practitioner will be required to report the transaction).

Sub-paragraph 2(a):

The proposed Anti-Terrorism Bill, Financial Intelligence Unit Bill and Criminal and Related Matters (Mutual Assistance) Bill appear to be relevant to the implementation of all 3 operative paragraphs of the Resolution. Please outline the content of those Bills and report on the progress of their passage and implementation.

What legislative and administrative controls apply in Mauritius to the export and import of firearms?

Please refer to copy of the Prevention of Terrorism Act 2002 proclaimed and which came into effect as from 16 March 2002 is attached at **Annex I and as outlined at Page 2**

Please refer to copy of the Financial Intelligence Unit and Anti-Money Laundering Act 2002 which has been proclaimed on 10 June 2002 is at **Annex II and as outlined at Page 3**

The Programme for the administrative and legislative controls relating to firearms are aimed at ensuring a more effective arms control, monitoring existing stocks, strengthening import and export control measures and reducing surplus arms and preventing and detecting illicit trafficking. Please see **Control Measures and copy of the Firearms Act at Annex VI.**

It should be pointed out that the Firearms Act is being reviewed to be more comprehensive and to call for more stringent measures.

Sub-Paragraph 2 (b):

Does Mauritius have a body that specializes in counter-terrorism, or is this the responsibility of a number of services or agencies? In the latter case, how is co-ordination between these different entities effected?

Does each agency define its strategy independently, or does it carry out activities that have been decided at a higher level? Who determines this policy and, if applicable, the distribution of tasks among the agencies?

The Republic of Mauritius does not have a body that specializes in counter-terrorism. There are a number of agencies involved in monitoring and reacting to Counter-Terrorism. Relevant Divisions in the Prime Minister's Office define and coordinate actions taken at the level of the Ministry for Home Affairs.

Sub-Paragraph 2(d):

What is the extent of the competence of the courts of Mauritius to deal with terrorist acts, or preparations for terrorist acts, that occur outside its territory?

Are the relevant provisions of the Penal (Criminal) Code of Mauritius applicable in all of the following circumstances:

- ***Acts committed outside Mauritius by a person who is a citizen of, or habitually resident in, Mauritius (whether that person is currently present in Mauritius or not);***

- ***Acts committed outside Mauritius by a foreign national who is currently in Mauritius?***

Section 30 of the Prevention of Terrorism Act 2002 provides that a Mauritian Court shall have jurisdiction to try an offence and inflict the penalties specified in the Act where the act constituting the offence under sections 3,4,5,6,7,11,12,14 and 15, **has been done or completed outside Mauritius,** and

(a) the victim is a citizen of the Republic of Mauritius **or** has an effective link with Mauritius or is dealing with **or** on behalf of the Government of Mauritius;
(b) the alleged offender is in Mauritius; **or**
(c) the alleged offender is in Mauritius, and Mauritius does not extradite him.

Sub-Paragraph 2 (e):

Please outline the main provision of Mauritian legislation relating to immigration control and the granting of the right of asylum which give effect to this sub-paragraph. How do the provisions prevent criminal groups abusing those provisions?

The Immigration Act regulates the entry and stay of non-citizens in Mauritius.

The Immigration Act provides for the establishment of list of prohibited immigrants who shall not be admitted to Mauritius especially in relation to persons who are involved in criminal activities, engaged in the traffic of drugs, or reasonably suspected to be engaged in any subversive activity of any kind directed against Mauritius or detrimental to the security of Mauritius or any friendly state.

The Immigration Act also provides for the issue of residence permits and refusal of admission to Mauritius and prevention of unauthorized disembarkation and for powers to inspect vessels to examine passengers and members of the crew and for detention for the purpose of being removed from Mauritius.

The Immigration Act does not make provision for asylum. In fact Section 8 of the Immigration Act has been amended by POTA to include non-citizens who are declared suspected international terrorists as Prohibited Immigrants.

Sub-Paragraph 2(f):

Could Mauritius please outline the proposed Criminal and Related Matters (Mutual Assistance) Bill and report on progress with its enactment and implementation.

The Criminal and Related Matters Mutual Assistance Bill has not been presented as of date to the National Assembly. However, Part IV of the Prevention of Terrorism Act 2002 and Part VI of the Financial Intelligence Unit and Anti-Money Laundering Act 2002 adequately address the issue, in so far as terrorism and money laundering are concerned.

Sub-Paragraph 2(g):

Please provide information on the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financing tracking and security with particular regard to the border controls preventing the movement of terrorists.

The Commissioner of Police is represented on the Narcotics Bureau and he has the operational responsibility for the Anti-Drugs and Smuggling Unit and the Passport and Immigration Office. The subject of Internal Security and Law and Order is in the portfolio of the Prime Minister and under the responsibility of the Secretary for Home Affairs in the

Prime Minister's office. Supervision of the Police Department rests with the Home Affairs Division of the Prime Minister's Office.

The Mechanism which exists for a unified approach on the customs side is as follows:

The Mauritius Customs and Excise Department is connected through the CEN(Customs Enforcement Network) to a worldwide database developed by the World Customs Organization on all narcotic seizures and commercial frauds effected at the international level. This provides the Customs and Excise Department with useful information in its enforcement action and development of strategies to fight more effectively narcotic trafficking and other cross-border crimes.

The Customs and Excise Department has a long-standing cooperation with the Mauritian Police through regular meetings at managerial and operational levels with a view to pool resources and operational intelligence in the fight against drug smuggling and cross-border crimes. A Memorandum of Understanding has been signed by the two agencies to formalize this cooperation.

A Memorandum of Understanding has also been signed between the National Airline Company (Air Mauritius) and the Customs and Excise Department for mutual assistance and cooperation in the fight against illicit activities, in particular, drug trafficking at the border in respect of passengers and manifested cargo. Similar MOU is envisaged to be signed with the trade and other organizations involved in the cargo and travel businesses.

Sub-paragraph 3(a) and (b):

Please report on any developments in the field of cooperation and exchange of information with other countries.

The Mauritian Police cooperates internationally in respect of the exchange of criminal information and police cooperation through Interpol Channels. The Mauritian Police has also concluded police cooperation agreements which can be used to obtain cooperation in terrorism investigations. For example the Agreement on Mutual Cooperation in the Field of Crime Combating, concluded between the 14 SADC Member-States provides for cross-border investigations and operations in general and even undercover operations and can therefore be used for counter-terrorist investigations and operations.

Sub-Paragraph 3 (c):

Please provide a list of the relevant bilateral and multilateral agreements to which Mauritius is party.

A new Extradition Act and new legislation on Mutual Legal Assistance in Criminal Matters will be prepared soon to envisage multilateral and bilateral cooperation in Extradition and Assistance in criminal matters taking into account the instruments currently under negotiation at the level of the SADC and the OAU.

Before the independence of Mauritius, UK, the former colonial power, had entered into Extradition Treaties with several countries. These Treaties were extended to Mauritius by virtue of the UK Extradition Acts 1870-1935. After Independence, Mauritius succeeded to the Treaties by Virtue of the Extradition Act 1970. Moreover, the Extradition Act also applies to all Commonwealth countries.

Mauritius has enacted legislation to give effect to the Scheme for the transfer of convicted offenders within the Commonwealth as agreed by the Commonwealth Law Ministers at their Meeting in Harare in 1986.

Mauritius has already incorporated the Strasbourg (EU) Convention related to transfer of prisoners in its law viz. the Transfer of Prisoners Act 2001. Arrangements are being made for Mauritius to become a party to the Strasbourg Convention.

Bilateral Agreements have been signed with France and Madagascar regarding mutual assistance between Customs and Excise Department and administrations of both countries for the prevention, detection and repression of all customs offences, including drug trafficking. Mauritius is a contracting party to the Nairobi Convention under the aegis of the World Customs Organization, which is a multilateral arrangement for assistance, especially for the exchange of information and surveillance of suspected people, goods, or means of transport in the fight against all types of customs offences and drug trafficking. This Convention which dates back to 1977 is presently subject to review by the World Customs Organisation to take into account modern needs of security and organized crimes.

Sub-Paragraph 3(d)and (e):

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Mauritius in:

- ***becoming a party to the instruments to which it is not yet a party; and***
- ***enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.***

Please outline how Mauritius has incorporated the conventions and protocols to which it is party into domestic law.

Could Mauritius please indicate whether the crimes mentioned in the relevant international conventions have been included as extraditable offences in the bilateral extradition treaties, which Mauritius has concluded with other countries.

Status of Signature, Ratification and Accession to International Treaties related to Terrorism

The Committee of Senior Officials set up by the Government of Mauritius to monitor implementation of UNSC Resolution 1373 has initiated appropriate actions for urgent consideration of the outstanding Conventions i.e conventions not yet signed or ratified/acceded to by the Government of Mauritius.

The Committee of Senior Officials is coordinating with various ministries and departments to make recommendations to the Government.

Security Council sanctions have to date been enforced within the framework of existing legislation and other legislative machinery. A review will be made with the aim of strengthening the legislative framework for the implementation and administration of international sanctions.

Sub-Paragraph 3(f):

Are there any legal or other means available to prevent persons linked to terrorist acts seeking asylum in Mauritius?

As stated in sub-paragraph 2 (e) it is not the policy of the Government of Mauritius to grant asylum. Under the Immigration Act (as amended following the adoption of the Prevention of Terrorism Act), persons who are declared as suspected international terrorists are declared Prohibited Immigrants.

Sub-Paragraph 3 (g):

Is it possible under Mauritius law for requests for extradition of alleged terrorists to be refused on political grounds?

It is possible under Mauritian law for requests for extradition of alleged terrorists to be refused on political grounds as provided for in Section 7(1) of the Extradition Act 1982.

Paragraph 4:

Has Mauritius addressed any of the concerns expressed in paragraph 4 of the Resolution?

Mauritius has adhered to the following International and Regional Conventions:

International Conventions/Treaties

1972 Convention on the Prohibition of the Development, Production, stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction was *signed on 10 April 1972 and ratified on 7 August 1972*

1980 UN Convention on Prohibition and Restriction on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects, was *acceded to on 6 May 1996*

1980 Protocol I on Non-Detectable Fragments was *acceded to on 6 May 1996*

1980 Protocol II on Prohibition and Restriction on the Use of Mines, Booby Traps and Other Devices was *acceded to on 6 May 1996*

Mauritius signed the Chemical Weapons Convention in January 1993 and ratified it in February 1993. As per provisions of the Convention, a National Authority has been set up and is responsible for the enforcement of the Convention in Mauritius. A Chemical Weapons Convention Bill is at the drafting stage.

The 1995 Protocol (to the CCW of 1980) on Blinding Laser Weapons is still under consideration and so is the 1996 Amended Protocol II (to the CCW of 1980) on Prohibitions or restrictions on the Use of Mines, Booby Traps and Other Devices. Legislation will have to be enacted to give full effect to the 1980 UN Convention on Certain Conventional Weapons and its Protocols and is currently being addressed.

1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction was *signed and ratified on 3 December 1997-enacted through the Anti-Personnel Mines (Prohibition) Act 2001*

In June 1998 Mauritius signed the Rome Statute of the International Criminal Court and *ratified the same on 5 March 2002*. Drafting Work pertaining to the implementation of the provisions of the Rome Statute is being undertaken

On 12 December 2000 Mauritius signed the Palermo Convention — UN Convention against Transnational Crime. Actions have been initiated to examine its implications in respect of existing legislations, prior to ratification.

Mauritius is also party to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Regional and Sub-Regional Conventions and Treaties

Mauritius is also party since 1992 to the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa and the Africa Nuclear Weapon Free Zone (Treaty of Pelindaba) since 1996.

In December 2000, Mauritius fully endorsed the Bamako Declaration on an African Common position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons which inter-alia calls for national and

regional programmes for preventing, controlling and eradicating illicit proliferation, circulation and trafficking of small arms and light weapons in Africa.

In 2001 Mauritius became party to the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials.

Within the SADC region, at its Extraordinary Summit held in Blantyre, Malawi in January 2002, a SADC Declaration on Terrorism was adopted which urged Member-States to enact appropriate legislation to combat terrorism and to share information in this regard. It should also be pointed out that the SADC Inter-State Defence and Security Committee has been directed to develop appropriate legal instruments and a Plan of Action to combat terrorism at the regional level.

REQUEST FOR ASSISTANCE

TECHNICAL ASSISTANCE REQUIRED
FOR IMPLEMENTATION OF UNSC RESOLUTION 1373 (2001)

1. BANKING SECTOR

The Central Bank (Bank of Mauritius) participated in a World Bank/IMF Meeting on "Technical Assistance on Anti-Money Laundering and Combating Financing of Terrorism" in April 2002, with donor agencies, Regional Development Banks and the FATF Style Regional Bodies, during the course of which, it was agreed that for the sake of good order and coordination, requests for Technical Assistance would be channeled through the FATF Style Regional Bodies wherever they exist.

At the above-mentioned Meeting, it was agreed by the Eastern and Southern Africa Anti-Money Laundering Group(ESAAMLG- of which Mauritius is a Member along with other 12 countries) that Member-States would complete a questionnaire with a view to assessing their technical needs.

The Bank of Mauritius has solicited Technical Assistance for the drafting of complete regulatory/administrative instructions/ guidelines for establishing an effective Anti-Money Laundering and Counter Financing of Terrorism regimes. Besides assistance has been called for upgrading of training facilities, equipment in training institutions, training of trainers and building up/improving capacity-cum-expertise for developing and updating training courses.

The Bank of Mauritius has identified the following as potential areas of Technical Assistance

(i) Forensic Accounting to detect Fraud and Money-Laundering
(ii) Real Time Application of Money-Laundering Techniques
(iii) Understanding and Investigating Financial Underpinnings of Terrorism
(iv) Identifying Networks related to Terrorism
(v) Forensic Applications in Combating Economic Fraud
(VI) International Financial Institutions Fraud and Commercial Fraud

2. FINANCIAL SERVICES SECTOR

The Ministry of Economic Development, Financial Services and Corporate Affairs (MEDFSCA) has indicated that it would require training and other assistance relating to the establishment of a Financial Intelligence Unit (FIU) in Mauritius following the proclamation of the Financial Intelligence and Anti-Money Laundering Act 2002.

The MEDFSCA would be much interested in the following training program provided by the USA in respect of Financial Law and Practice:

(i) Financial underpinning of Terrorism
(ii) Investigating Financial Underpinning of Terrorism- Senior Seminar
(iii) International Financial Institution Fraud
(iv) White Collar Crime/ Financial Crimes Seminar
(v) Money Laundering Training
(vi) Transnational Money Laundering
(vii) Money-Laundering and Financial Investigative Training
(viii) Training and Technique Application- Advanced Program
(ix) Combating Economic Crime- Advanced Seminar
(x) Money Laundering and Asset Forfeiture
(xi) Asset Forfeiture for Financial Investigation
(xii) International Asset Forfeiture and Asset Sharing
(xiii) Principles and Techniques of Financial Investigation
(xiv) Combating Economic Fraud and Counterfeiting
(xv) Forensic Applications in Combating Economic Fraud and Counterfeiting
(xvi) Cyber Crime and Cyber-Terrorism

The Financial Services Commission (FSC) which is the regulatory body for the financial services sector has identified the following areas which may be considered for technical assistance:

(i) Establishment/upgrading of the Financial Intelligence Unit
(ii) Setting up/Upgrading the database for the FIU

The Financial Services Commission wishes to be advised whether there is any particular software which the FIU might use in analyzing data. Besides the services of an expert from a country with particular experience in dealing with terrorist financing would be desirable. The Expert might assist in the establishment of proper procedures within the FIU and also conduct training with companies involved in the financial services sector.

3. HOME AFFAIRS DEPARTMENT

After an analysis of the Technical Assistance that could be available, the Prime Minister's Office, which has the portfolio for the Home Affairs and Security Department and the Police Department, would appreciate it if Technical Assistance could be provided in the following areas:

(i) Immigration Training Development Program
(ii) International Travel Document Fraud Investigations
(iii) Airport Security Management
(iv) Anti-Terrorism Executive Forum
(v) Canine Explosive Detector and Dog Handler Training
(vi) Maritime Security Management
(vii) International Post Blast Investigation Techniques
(viii) VIP Protection Training
(ix) Vital Installations Security
(x) Anti-Terrorism Urban Patrol
(xi) Criminal Justice Executive Forum
(xii) Crisis Response Team Training
(xiii) Critical Incident Management
(xiv) Explosive incident Counter Measures
(xv) Hostage Negotiations
(xvi) Major Case Management

(xvii) Maritime Law Enforcement/Small Boat Course
(xviii) Senior Crisis Management
(xix) Terrorist Crime Scene Management
(xx) Surveillance Techniques
(xxi) Civil Disorder Management
(xxii) Training by International Law Enforcement Academies- Regional- Botswana
(xxiii) Fugitive Apprehension Training
(xxiv) Train the Trainer Workshop
(xxv) Integrity/Anti Corruption Workshop
(xxvi) Response to Chemical, Biological and Radiological Events
(xxvii) Management of Disasters involving Hazardous Substances

An immediate requirement in training assistance would be in the field of anti-hijacking operations. Training of an Emergency Response Team of about 20-30 Officers to deal with hijack situations once such an aircraft has landed in Mauritius.

Under the Multi-Agency Training Assistance listed under the Section "*Police and Law Enforcement*" indicated in the US List of Technical Assistance, a course in "Port Physical Security and Port Vulnerability Assessment" could be conducted in Mauritius for the benefit of Mauritian officials as well as participants from countries of the region.

4. MINISTRY OF FINANCE AND CUSTOMS AND EXCISE DEPARTMENT

The Ministry of Finance has identified training programs offered by the US technical Assistance for the Revenue Authority, Revenue Departments and the Customs and Excise Department.

Prime request is the supply, installation and commissioning of a mobile vehicle fitted with X-ray, Scanning equipment for the detection of drugs, weapons, explosives, radioactive and bio-terrorist materials and other contrabands concealed in conventional cargo and cargo stuffed in containers.

Types of Training Courses and Programs identified

(i) Counter-Proliferation Interdiction Team Training
(ii) Overseas Enforcement Training Program
(iii) Contraband Enforcement Team Program
(iv) Passenger Enforcement Rover Team Training
(v) Port Security Program
(vi) Prevention and Control of Illicit Drugs Trafficking Aboard Vessels
(vii) Controlled Deliveries
(viii) International Firearms and Explosives Identification Training
(ix) Customs Laboratory Program

5. ATTORNEY GENERAL'S OFFICE

Technical Assistance by way of exposure and opportunities to enhance capacity in developing tools, techniques and skills in the new and post 11 September challenges in the administration of the law. In addition to the technical assistance solicited in relation to money-laundering, asset forfeiture, international fraud detection, financial investigations, the following would be also be directly relevant:

(i) Financial Underpinning of the Law on Terrorism
(ii) Transnational Judicial Assistance
(iii) International Law Enforcement Academies Training Programme

6. MINISTRY OF FOREIGN AFFAIRS AND REGIONAL COOPERATION

The Ministry of Foreign Affairs and Regional Cooperation is currently chairing a Committee of Senior Officials set up to look into the ratification, accession and implementation of international and regional conventions related to terrorism.

The Ministry understands that the Commonwealth Secretariat has existing "implementation kits" for the International Convention against the Taking of Hostages and the Conventions and Protocols on the Safety of Civil Aviation and that the Secretariat is currently updating the existing kits and developing additional kits for the remainder of the United Nations Anti-Terrorism Conventions. The Ministry intends to pursue close contacts with the Commonwealth Secretariat to avail itself of these kits for advised decision on ratification and accession and implementation of conventions.

Contacts with the Commonwealth Secretariat has indicated that the Prevention of Terrorism Act 2002 of Mauritius could serve as one of the model that can be adopted by other States, and the government of Mauritius would be pleased to share its expertise and advise on the drafting of such kind of legislation through request by other States or participation in international and regional workshops.

Training Assistance is required for the Officials of this Ministry through Counter-Terrorism Preparedness Program to facilitate policy engagement with regard to counter-terrorism and increase awareness as to the significant complexities of preventing and effectively mitigating terrorist incidents.